

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Forty-Fourth Report to the Court recommending adoption of proposed new Rule 1.17 and amendments to Rules 5.4, 5.6, and 7.2 of the Maryland Lawyers' Rules of Professional Conduct, a proposed revision of Title 16, Chapter 700, and a proposed amendment to Rule 16-811, all as set forth in that Report published in the Maryland Register, Vol. 26, Issue 9, pages 677-724 (April 23, 1999);
and

This Court, by Rules Order filed October 1, 1999 and published in the Maryland Register, Vol. 26, Issue 22, page 1673 (October 22, 1999), having adopted proposed new Rule 1.17 and the proposed amendments to Rules 5.4, 5.6, and 7.2 of the

Maryland Lawyers' Rules of Professional Conduct and having recommitted the proposed revision of Title 16, Chapter 700 and the proposed amendment to Rule 16-811 to the Rules Committee for further study and the development of alternative proposals; and

The Rules Committee having submitted a Supplement to the One Hundred Forty-Fourth Report to the Court transmitting thereby an alternative proposal for the revision of Title 16, Chapter 700 and a proposed amendment to Rule 16-811, all as set forth in that Supplement published in the Maryland Register, Vol. 27, Issue 1, pages 44-71 (January 14, 2000); and

This Court, by Rules Order filed June 6, 2000 and published in the Maryland Register, Vol. 27, Issue 13, page 1196 (June 30, 2000), having ordered the appointment of a special committee of judges of the Court to draft an alternative proposal for the revision of Title 16, Chapter 700 that expedites the attorney disciplinary process; and

The special committee having submitted to the Court an alternative proposal for the revision of Title 16, Chapter 700, which was published in the Maryland Register, Vol. 27, Issue 20, pages 1808 - 1831 (October 6, 2000); and

This Court having considered at open meetings, notices of which were posted as prescribed by law, all those proposed rules

changes, together with the comments received, it is this 30th day of November, 2000,

ORDERED, by the Court of Appeals of Maryland, that Rule 16-703 be, and it is hereby, deleted, effective January 1, 2001, and it is further

ORDERED that amendments to Rules 16-702, 16-709, and 16-811 d and h be, and they are hereby, adopted in the form attached to this Order, effective January 1, 2001, and it is further

ORDERED that, effective January 1, 2001, the composition of the Attorney Grievance Commission shall be as follows:

Commission Members whose term ends June 30, 2001:

G. Douglas Reinhard, Esq.
Thomas L. Starkey, Esq.
B. Harriette Taylor, Esq.
Mr. Dana Miller

Commission Members whose term ends June 30, 2002:

J. Donald Braden, Esq.
Leo Edward Green, Jr., Esq.
Mayda C. Tsaknis, Esq.
Mr. Jerry Sachs

Commission Members whose term ends June 30, 2003:

David D. Downes, Esq., Chair
Linda L. Lamone, Esq., Vice Chair
An attorney member, to be appointed by this Court
A member who is not an attorney, to be appointed by
this Court;

and it is further

ORDERED that the terms of the members of the Inquiry Committee and the Review Board who are members on December 31, 2000 be, and they are hereby, extended as necessary to

complete the matters before Inquiry Panels and the Review Board under the Rules currently in Title 16, Chapter 700, in accordance with this Order and subject to further order of this Court; and it is further

ORDERED that, except as otherwise provided in this Order, the Rules in Title 16, Chapter 700 be, and they are hereby, rescinded effective June 30, 2001; and it is further

ORDERED that revised Title 16, Chapter 700 be, and it is hereby, adopted in the form attached to this Order to take effect July 1, 2001; and it is further

ORDERED that the amendments to Rule 16-811 d, f, and h to take effect July 1, 2001 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the Rules changes hereby adopted by

this Court and made effective January 1, 2001 shall govern the courts of this State, the Attorney Grievance Commission, the Clients' Security Trust Fund, and all parties and their attorneys in all actions, proceedings, and matters from and after that date and, insofar as practicable, to all matters then pending, and it is further

ORDERED that, except as otherwise provided in this Order, the Rules changes hereby adopted by this Court and made effective July 1, 2001 shall govern the courts of this State, the Attorney Grievance Commission, the Clients' Security Trust Fund, and all parties and their attorneys in all actions, proceedings, and matters from and after that date, provided, however, that any matter pending before an Inquiry Panel, the Review Board, or the Court of Appeals pursuant to charges, a petition, or an application pending as of June 30, 2001 shall continue to be governed by the Rules in effect on June 30, 2001; and it is further

ORDERED that a copy of this Order be published in the next issue of the Maryland Register.

/s/ Robert M. Bell

Robert M. Bell

/s/ John C. Eldridge

John C. Eldridge

/s/ Lawrence F. Rodowsky

*Lawrence F. Rodowsky

/s/ Irma S. Raker

Irma S. Raker

/s/ Alan M. Wilner

Alan M. Wilner

/s/ Dale R. Cathell

Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

* Rodowsky, J., now retired, participated in the

hearings and meetings pertaining to the Rules
while an active member of this Court; after being
recalled pursuant to the Constitution, Article
IV,
Section 3A, he also participated in the adoption
of
these Rules.

Filed: November 30, 2000

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

DELETE Rule 16-703 effective January 1, 2001, as follows:

[Rule 16-703. COMMISSION PROCEDURES AND POWERS.

a. Quorum.

A majority of the full authorized membership of the Commission constitutes a quorum for the transaction of business and the concurrence of at least that many members is required for all action taken by the Commission.

b. Powers and Duties.

The Commission has powers and duties to:

(i) Recommend to the Court of Appeals for its adoption procedural and administrative rules relating to the disciplinary system affecting attorneys;

(ii) Appoint and supervise the activities of the Bar Counsel; (iii) Authorize the Bar Counsel to employ attorneys, investigators and clerical personnel and to prescribe their compensation;

(iv) Appoint those persons as provided in Rule 16-705 c 1 (Inquiry Committee and Review Board - Inquiry Committee - Composition) to serve as members of the Inquiry Committee and

remove any members for cause; failure to assume regularly the responsibilities of a member shall be cause for removal;

(v) Appoint those persons as provided in Rule 16-705 d (Inquiry Committee and Review Board - Review Board) to serve as members of the Review Board and remove any members for cause; failure to assume regularly the responsibilities of a member shall be cause for removal;

(vi) Appoint counsel from time to time to assist the Bar Counsel in the performance of his duties;

(vii) Administer the Disciplinary Fund and file annually with the Court of Appeals, not later than September 1, an accounting thereof and a report of disciplinary activities for the previous fiscal year. The accounting and report shall be published by the Commission. There shall be an independent annual audit of the fund administered by it as directed by the Court of Appeals, the expenses of which audit shall be paid out of the fund;

(viii) Submit an annual report to the Court of Appeals, not later than September 1, evaluating the effectiveness of the disciplinary system and recommending any desirable changes. The report may include statistical data and opinions of the Review Board. The report shall be published at least annually by the Commission, subject to the provisions of Rule

16-708 (Confidentiality); and

(ix) Submit annually to the State Court Administrator a proposed budget for the disciplinary system. The budget is subject to review and approval by the Court of Appeals.

Source: This Rule ~~MARYLAND RULES OF PROCEDURE~~

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-702, effective January 1, 2001, to change the composition of the Attorney Grievance Commission and to make certain other changes in conformity with the transition to the revision of Title 16, Chapter 700, as follows:

Rule 16-702. ATTORNEY GRIEVANCE COMMISSION.

a. Creation and [Purpose] Composition.

[The Attorney Grievance Commission of Maryland is authorized and created. The Commission shall supervise and administer the discipline and inactive status of attorneys in accordance with this Chapter.] There is an Attorney Grievance Commission which shall consist of 12 members appointed by the Court of Appeals. Nine members shall be attorneys and three members shall not be attorneys.

b. [Composition] Term.

[The Commission consists of ten members, two of whom shall not be attorneys, appointed by the Court of Appeals. One member shall be designated by the Court of Appeals as chairman of the Commission. The term of each member is four years, except that the initial terms of four of those first appointed to the Commission shall be one year, two years, three years and three years, respectively, the initial term of the eighth and ninth members shall be two years, and the initial term of the tenth member shall be three years. No member is eligible for reappointment for a term immediately following the expiration of the member's service for one full term of four years. A member of the Commission may be removed by the Court of Appeals at any time.] Subject to section f of this Rule, the term of each member shall expire as provided by a Rules Order of the Court of Appeals dated November 30, 2000.

c. Compensation.

A member of the Commission may not receive compensation for serving in that capacity, but is entitled to reimbursement for [his] expenses reasonably incurred in the performance of [his] official duties[, including but not limited to transportation costs] in accordance with standard State travel regulations.

d. Chair and Vice Chair.

The Court of Appeals shall designate one attorney

member as the Chair of the Commission and one attorney member as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

e. Executive Secretary.

The Commission may select an attorney as Executive Secretary. The Executive Secretary shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission. As directed by the Commission, the Executive Secretary shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house counsel to the Commission, (4) serve as liaison to the Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

f. Removal.

The Court of Appeals may remove a member of the Commission at any time.

g. Quorum.

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

h. Powers and Duties.

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation of the Executive Secretary;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel;

(5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises; (7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member for cause;

(8) employ and prescribe the compensation of personnel to

assist the Chair of the Peer Review Committee;

(9) perform the duties required by Title 16, Chapter 600
(Attorney Trust Accounts);

(10) administer the Disciplinary Fund;

(11) submit not later than September 1 of each year a
report to the Court of Appeals accounting for the Disciplinary
Fund, evaluating the effectiveness of the disciplinary system,
and recommending any changes;

(12) submit annually to the State Court Administrator for
review and approval by the Court of Appeals a proposed budget
for the disciplinary system; and

(13) exercise all of the powers and duties that the
Commission could exercise on December 31, 2000.

i. Effect of Chair's Decisions.

When a request for action under this Chapter is subject
to the approval of the Chair of the Commission, the Chair's
approval of the request is final and shall be reported to the
Commission. If the Chair denies the request or refers it to
the Commission for action, the Commission shall act upon the
request at its next meeting.

[d.] j. Disciplinary Fund.

1. Payments by Attorneys.

The Disciplinary Fund is established. In addition to, and

on the same date as, other sums required to be paid pursuant to Rule 16-811 (Clients' Security Fund) each attorney, including attorneys granted a certificate of special authorization under Rule 15 of the Rules Governing Admission to the Bar, shall, as a condition precedent to the practice of law, pay annually to the Disciplinary Fund the sum, including any late charges, the Court of Appeals prescribes for any year.

2. Collection and Disbursement of Disciplinary Fund.

The treasurer of the Clients' Security Trust Fund of the Maryland Bar shall collect the sums paid by attorneys to the Disciplinary Fund and shall pay over such sums as the Commission from time to time directs.

3. Enforcement.

Enforcement of payment of annual assessments of attorneys pursuant to this Rule is governed by the provisions of section g of Rule 16-811 (Clients' Security Fund).

Source: This Rule is derived in part from former Rule BV2 and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-709, effective January 1, 2001, to allow service of charges to be made upon the treasurer of the Clients'

Security Trust Fund under certain circumstances, as follows:

Rule 16-709. CHARGES

a. Who May File.

Charges against an attorney shall be filed by the Bar Counsel acting at the direction of the Review Board.

Cross reference: For definition of "charges," see Rule 16-701

d. b. Where Filed and Heard.

Charges against an attorney shall be filed on behalf of the Commission in the Court of Appeals. The Court of Appeals by order may direct that the charges be transmitted to and heard in any court and shall designate the judge or judges to hear the charges and the clerk responsible for maintaining the record in the proceeding.

Cross reference: For the definition of court, see Rule 16-701

f. c. Form.

The charges shall be in writing and shall be sufficiently clear and specific reasonably to inform the attorney proceeded against of any misconduct charged and of the basis of any allegation that he is incompetent.

d. Service.

The Court of Appeals shall direct in each case the manner of service of a copy of the charges which shall be served

together with the order of the Court of Appeals designating the court and judge or judges to hear the charges. If after reasonable efforts the attorney cannot be served personally, service may be made upon the treasurer of the Clients' Security Trust Fund, who shall be deemed the attorney's agent for receipt of service. The treasurer shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the Trust Fund's records and to any other address provided by Bar Counsel.

Cross reference: For definition of process, see Rule 1-202 (t). For the power of the Court of Appeals to issue process, see former Rule 857.

e. Pleadings.

1. Motion for Transfer.

Within fifteen days following the service of the order designating a court in which the charges shall be heard, the attorney charged may move in the Court of Appeals for a transfer of the hearing to another court. Action on the motion is in the discretion of the Court of Appeals. Filing the motion shall not stay the time for answer to the charges. Procedure on the motion is governed by the applicable provisions of Rule 8-431 (Motions).

2. Time for Initial Pleading.

The attorney responding to the charges shall file his initial pleading in the court designated to hear the charges within fifteen days after the date of service of the charges upon him, unless a different time is fixed by the order of the Court of Appeals. 3. Subsequent Pleadings.

Subsequent pleadings shall be governed by and filed in the court designated to hear the charges within the times set forth in the applicable provisions of Chapter 300 of Title 2.

Source: This Rule is former Rule BV9.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-811 d and h, effective January 1, 2001, to conform the Rule to certain amendments to Rules 16-702 and 16-709, as follows:

Rule 16-811. Clients' Security Fund.

. . .

d. Powers and Duties of Trustees.

1. Additional Powers and Duties.

In addition to the powers granted elsewhere in this Rule, the trustees shall have the following powers and duties:

(i) To receive, hold, manage, and distribute, pursuant to this Rule, the funds raised hereunder, and any other monies that may be received by the trust fund through voluntary contributions or otherwise.

(ii) To authorize payment of claims in accordance with this Rule.

(iii) To adopt regulations for the administration of the trust fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt bylaws for conducting business. A copy of such regulations shall be filed with the clerk of this Court, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. (iv) To enforce claims for restitution, arising by subrogation or assignment or otherwise.

(v) To invest the trust fund, or any portion thereof, in such investments as they may deem appropriate, and to cause funds to be deposited in any bank, banking institution or federally insured savings and loan association in this State, provided however, that the trustees shall have no obligation to cause the trust fund or any portion thereof to be invested.

(vi) To employ and compensate consultants, agents, legal counsel and employees.

(vii) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the trust fund, including the power to authorize disbursements for routine operating expenses of the trust fund, but authorization for payments of claims shall be made only as provided in section i (Claims) of this Rule.

(viii) To sue or be sued in the name of the trust without joining any or all individual trustees.

(ix) To comply with the requirements of Rules 16-702 j and 16-709 d.

[(ix)] (x) To perform all other acts necessary or proper for fulfillment of the purposes of the trust fund and its efficient administration.

2. Report and Audit - Filing.

At least once each year, and at such additional times as the Court may order, the trustees shall file with this Court a written report, which shall include the audit made pursuant to subsection 3 of section j (Powers of Court of Appeals - Audits) of this Rule of the management and operation of the trust fund.

. . .

h. Treasurer's Duties.

1. Separate Account.

The trust fund shall be maintained by the treasurer in a separate account.

2. Disbursements.

The treasurer shall disburse monies from the trust fund only upon the action of the trustees pursuant to this Rule.

3. Bond.

The treasurer shall file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the trust fund in an amount established from time to time by the trustees and with such surety as may be approved by the trustees.

4. Other Duties.

The treasurer shall comply with the requirements of Rules 16-702 j and 16-709
MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

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Rule 16-701. DEFINITIONS

In this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

- (a) Attorney

"Attorney" means a person admitted by the Court of Appeals to practice law in this State. For purposes of discipline or inactive status, the term also includes a person

not admitted by the Court of Appeals who engages in the practice of law in this State, or who holds himself or herself out as practicing law in this State, or who has the obligation of supervision or control over another lawyer who engages in the practice of law in this State.

Cross reference: See Rule 8.5 of the Maryland Rules of Professional Conduct.

(b) Circuit

"Circuit" means Appellate Judicial Circuit.

(c) Commission

"Commission" means the Attorney Grievance Commission of Maryland.

(d) Conditional Diversion Agreement

"Conditional diversion agreement" means the agreement provided for in Rule 16-736.

(e) Disbarment

"Disbarment" means the unconditional termination of any privilege to practice law in this State and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

(f) Incapacity

"Incapacity" means the inability to render adequate legal service by reason of mental or physical illness or

infirmity, or addiction to or dependence upon an intoxicant or drug.

(g) Office for the Practice of Law

"Office for the practice of law" means an office in which an attorney usually devotes a substantial part of the attorney's time to the practice of law during ordinary business hours in the traditional work week.

(h) Petition for Disciplinary or Remedial Action

"Petition for disciplinary or remedial action" means the initial pleading filed in the Court of Appeals against an attorney alleging that the attorney has engaged in professional misconduct or is incapacitated or both.

(i) Professional Misconduct

"Professional misconduct" or "misconduct" has the meaning set forth in Rule 8.4 of the Maryland Rules of Professional Conduct, as adopted by Rule 16-812. The term includes the knowing failure to respond to a request for information authorized by this Chapter without asserting, in writing, a privilege or other basis for such failure.

(j) Reinstatement

"Reinstatement" means the termination of disbarment, suspension, or inactive status and the termination of any exclusion to practice law in this State. (k) Serious Crime

"Serious crime" means a crime that is in at least one of the following categories: (1) a felony under Maryland law, (2) a crime in another state or under federal law that would have been a felony under Maryland law had the crime been committed in Maryland, and (3) a crime under federal law or the law of any state that is punishable by imprisonment for three years or more.

(l) State

"State" means (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

(m) Statement of Charges

"Statement of charges" means the document that alleges professional misconduct or incapacity and initiates disciplinary or remedial proceedings against an attorney pursuant to Rule 16-741.

(n) Suspension

"Suspension" means the temporary or indefinite termination of the privilege to practice law and, when applied to an attorney not admitted by the Court of Appeals to practice law, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

(o) Warning

"Warning" means a notice that warns an attorney about future misconduct. Source: This Rule is derived in part from former Rule 16-701 (BV1) and is in part new. Rule 16-711. ATTORNEY GRIEVANCE COMMISSION

(a) Creation and Composition

There is an Attorney Grievance Commission which shall consist of 12 members appointed by the Court of Appeals. Nine members shall be attorneys and three members shall not be attorneys.

(b) Term

Subject to section (f) of this Rule, the term of each member is three years. The terms of the members shall be staggered so that the terms of three attorney members and one non-attorney member expire each year.

(c) Compensation

A member of the Commission may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(d) Chair and Vice Chair

The Court of Appeals shall designate one attorney member as the Chair of the Commission and one attorney member

as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(e) Executive Secretary

The Commission may select an attorney as Executive Secretary. The Executive Secretary shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission. As directed by the Commission, the Executive Secretary shall (1) receive documents that are filed with the Commission and maintain the records of the Commission, (2) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials, (3) serve as in-house counsel to the Commission, (4) serve as liaison to the Chair of the Peer Review Committee, and (5) have such other administrative powers and duties assigned by the Commission.

(f) Removal

The Court of Appeals may remove a member of the Commission at any time.

(g) Quorum

The presence of seven members of the Commission constitutes a quorum for the transaction of business. The concurrence of seven members is required for all actions taken by the Commission other than adjournment of a meeting for lack of a quorum.

(h) Powers and Duties

The Commission has the powers and duties to:

(1) recommend to the Court of Appeals the adoption of procedural and administrative guidelines and policies consistent with these Rules;

(2) employ and prescribe the compensation of the Executive Secretary;

(3) with the approval of the Court of Appeals, appoint Bar Counsel;

(4) supervise the activities of Bar Counsel; (5) authorize Bar Counsel to employ attorneys, investigators, and staff personnel and to prescribe their compensation;

(6) appoint special counsel as the need arises;

(7) appoint members of the Peer Review Committee, designate the Chair and one or more Vice Chairs, and remove any member for cause;

(8) employ and prescribe the compensation of personnel to assist the Chair of the Peer Review Committee;

(9) exercise the authority granted in the Rules in this Chapter with respect to the approval or disapproval of (A) the dismissal of a complaint or Statement of Charges, (B) the termination of a complaint with or without a warning, (C) a Conditional Diversion Agreement, (D) a reprimand, or (E) the filing of a Petition for Disciplinary or Remedial Action;

(10) grant or deny any requests for extensions of time permitted under the Rules of this Chapter or delegate to the Chair of the Commission the authority to grant or deny such requests;

(11) authorize the issuance of subpoenas in accordance with these Rules;

(12) perform the duties required by Title 16, Chapter 600 (Attorney Trust Accounts);

(13) administer the Disciplinary Fund;

(14) submit not later than September 1 of each year a report to the Court of Appeals accounting for the Disciplinary Fund, evaluating the effectiveness of the disciplinary system, and recommending any changes; and

(15) submit annually to the State Court Administrator for review and approval by the Court of Appeals a proposed budget for the disciplinary system.

(i) Effect of Chair's Decisions

When a request for action under this Chapter is subject to the approval of the Chair of the Commission, the Chair's approval of the request is final and shall be reported to the Commission. If the Chair denies the request or refers it to the Commission for action, the Commission shall act upon the request at its next meeting.

Source: This Rule is derived from former Rules 16-702 a, b, and c (BV2 a, b, and c), and 16-703 (BV3).
Rule 16-712. BAR COUNSEL

(a) Appointment

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney as Bar Counsel. Before appointing Bar Counsel, the Commission shall notify bar associations and the general public of the vacancy and consider any recommendations that are timely submitted. Bar Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(b) Powers and Duties

Subject to the supervision and approval, if required, of the Commission, Bar Counsel has the powers and duties to:

- (1) investigate professional misconduct or incapacity;
- (2) issue subpoenas as provided by Rule 16-732;

(3) enter into and implement Conditional Diversion Agreements, issue notices, and administer warnings and reprimands;

(4) file statements of charges, participate in proceedings before Peer Review Panels, and prosecute all disciplinary and remedial proceedings;

(5) file and prosecute petitions for disciplinary and remedial actions in the name of the Commission;

(6) monitor and enforce compliance with all disciplinary and remedial orders of the Court of Appeals;

(7) investigate petitions for reinstatement and applications for resignation from the practice of law and represent the Commission in those proceedings; (8) initiate, intervene in, and prosecute actions to enjoin the unauthorized practice of law;

(9) employ attorneys, investigators, and staff personnel as authorized by the Commission at the compensation set forth in the Commission's budget;

(10) discharge any employee;

(11) maintain dockets and records of all papers filed in disciplinary or remedial proceedings;

(12) make reports to the Commission; and

(13) perform other duties prescribed by the Commission, this Chapter, and the Rules in Title 16, Chapter 600 (Attorney Trust Accounts).

Source: This Rule is derived from former Rule 16-704 (BV4). Rule 16-713. PEER REVIEW COMMITTEE

(a) Creation

There is a Peer Review Committee, the members of which are appointed to serve on Peer Review Panels pursuant to Rule **16-742**.

(b) Composition

The Peer Review Committee consists of the number of persons in each circuit that the Commission determines is necessary to conduct the volume of peer review proceedings. Of the number of members determined for each circuit, one-third shall be residents of that circuit who are not attorneys and the remainder shall be attorneys who maintain offices for the practice of law within that circuit.

(c) Persons Ineligible for Appointment as a Lawyer Member

The Commission may not appoint as a lawyer member to the Peer Review Committee a person who:

(1) is not admitted by the Court of Appeals to practice law in Maryland;

(2) has not actively and lawfully engaged in the practice of law in Maryland for at least five years;

(3) is a judge of a court of record;

(4) is the subject of a pending statement of charges or petition for disciplinary or remedial action; or

(5) was ever disbarred or suspended by the Court of Appeals or by a disciplinary body or court of the United States or any other state.

(d) Persons Ineligible for Appointment as a Non-lawyer Member The Commission may not appoint as a non-lawyer member to the Peer Review Committee a person who:

(1) has been convicted of a serious crime and the conviction has not been reversed or vacated; or

(2) is the complainant in a pending matter against an attorney under the Rules in this Chapter.

(e) Procedure For Appointment

Before appointing members of the Peer Review Committee, the Commission shall notify bar associations and the general public in the appropriate circuit and consider any applications and recommendations that are timely submitted. The Commission shall prepare a brief notice informing attorneys how they may apply to serve on the Peer Review Committee and deliver the notice to the Trustees of the

Clients' Security Trust Fund, who at least once a year shall send a copy of the notice to each attorney who is required to pay an annual fee to the Fund.

(f) Term

The term of each member is two years. The Commission may extend the term of any member assigned to a Peer Review Panel until the completion of a pending matter. A member may be reappointed.

(g) Chair and Vice Chair

The Commission shall designate one attorney member of the Peer Review Committee as Chair and one or more attorney members as Vice Chairs. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair. (h) Compensation

A member of the Peer Review Committee may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(i) Removal

The Commission may remove a member of the Peer Review Committee for cause.

Source: This Rule is new.
Rule 16-714. DISCIPLINARY FUND

(a) Payment by Attorneys

There is a Disciplinary Fund. As a condition precedent to the practice of law, each attorney shall pay annually to the Fund the sum that the Court of Appeals prescribes. The sum shall be paid in addition to and by the same date as other sums required to be paid pursuant to Rule 16-811.

(b) Collection and Disbursement of Disciplinary Fund

The treasurer of the Clients' Security Trust Fund of the Bar of Maryland shall collect and remit to the Commission the sums paid by attorneys to the Disciplinary Fund.

(c) Audit

There shall be an independent annual audit of the Disciplinary Fund. The expense of the audit shall be paid out of the Fund.

(d) Enforcement

Enforcement of payment of annual assessments of attorneys pursuant to this Rule is governed by the provisions of Rule 16-811 (g).

Source: This Rule is derived from former Rule 16-702 d (BV2 d) and 16-703 b (vii) (BV3 b (vii)).

Rule 16-721. SANCTIONS AND REMEDIES FOR MISCONDUCT OR INCAPACITY

(a) Professional Misconduct

One or more of the following sanctions or remedies may be imposed upon an attorney for professional misconduct:

- (1) disbarment by the Court of Appeals;
- (2) suspension by the Court of Appeals;
- (3) reprimand by the Court of Appeals or, with the attorney's consent, by the Commission;
- (4) conditional diversion in accordance with a Conditional Diversion Agreement entered into pursuant to Rule 16-736; and
- (5) termination of a disciplinary or remedial proceeding accompanied by a warning pursuant to Rule 16-735 (b).

(b) Incapacity

One of the following remedies may be imposed upon an attorney for incapacity:

- (1) placement on inactive status, subject to further order of the Court, or
- (2) conditional diversion in accordance with a Conditional Diversion Agreement entered pursuant to Rule 16-736.

(c) Conditions

An order, decision, or agreement that imposes a disciplinary sanction upon an attorney or places an attorney on inactive status may include one or more specified conditions, as authorized by Rules 16-736, 16-760, and 16-781.

Source: This Rule is new.

Rule 16-722. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

(a) Action for Audit

Bar Counsel or the Clients' Security Trust Fund may file a petition requesting an audit of the accounts and records that an attorney is required by law or Rule to maintain. The petition may be filed in the circuit court in any county where the attorney resides or has an office for the practice of law. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

(b) Petition

The petition shall state the facts showing that an audit is necessary and shall request the appointment of a Certified Public Accountant to conduct the audit. Proceedings under this Rule shall be sealed and stamped "confidential" at the time of filing, and the docket entries shall not divulge the name or otherwise identify the attorney against whom the petition is filed.

(c) Caption

The petition and all subsequent pleadings and papers filed in the action shall contain a caption, "In re: Application for Audit of an Attorney's Accounts and Records."

(d) Show Cause Order; Service

The court shall enter an order giving the attorney notice of the action and directing the attorney to show cause on or before a stated date why an audit should not be conducted as requested. The order and the petition shall be served in the manner that the court directs so as to preserve the confidentiality of the action.

(e) Response to Petition

The attorney may file a response to the petition and show cause order not later than the date stated in the order or, if no date is stated, within five days after being served.

(f) Order Directing Audit

After considering the petition and any response and upon a finding of good cause, the court may order any of the accounts and records required by law or Rule to be maintained by the attorney to be audited by a Certified Public Accountant designated in the order. The order directing the audit shall expressly require that the audit be conducted and a report be made in a manner that preserves the confidentiality of the

proceedings and the attorney's confidential relation with the attorney's clients.

(g) Finality of Order

An order granting or denying a petition for an audit is a final order for purposes of appeal.

(h) Duty of Clerk to Preserve Confidentiality

The clerk shall maintain a separate docket with an index for proceedings under this Rule. Pleadings and other papers filed in the proceedings shall be sealed in accordance with Rule 16-723 (b)(7) at the time they are filed. The docket, index, and papers in the proceedings shall not be open to inspection by any person, including the parties, except upon order of court after reasonable notice and for good cause shown. (i) Cost of Audit

Upon completion of the audit, the court may order all or part of the costs of the audit and of the proceeding to be paid by any party to the proceeding, but costs shall not be assessed against the attorney if the audit fails to disclose any irregularity.

(j) Remedy Not Exclusive

Neither this Rule nor any proceeding under this Rule precludes any other remedy or cause of action while the audit is pending or thereafter.

Source: This Rule is in part derived from former Rule 16-718 (BV18) and in part new.

Rule 16-723. CONFIDENTIALITY

(a) Confidentiality of Peer Review Meetings

All persons present at a peer review meeting shall maintain the confidentiality of all speech, writing, and conduct made as part of the meeting and may not disclose or be compelled to disclose the speech, writing, or conduct in any judicial, administrative, or other proceeding. Speech, writing, or conduct that is confidential under this Rule is privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use at the peer review meeting.

(b) Other Confidential Proceedings and Records

Except as otherwise provided in these Rules, the following records and proceedings are confidential and not open to inspection:

- (1) the records of an investigation by Bar Counsel;
- (2) the records and proceedings of a Peer Review Panel;
- (3) information that is the subject of a protective order;

(4) the contents of a warning issued by Bar Counsel pursuant to Rule 16-735 (b), except the fact that a warning was issued shall be disclosed to the complainant;

(5) the contents of a Conditional Diversion Agreement entered into pursuant to Rule 16-736, except the fact that an attorney has signed such an agreement shall be public;

(6) the records and proceedings of the Commission on matters that are confidential under this Rule; (7) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings other than proceedings in the Court of Appeals on that petition; and

(8) a petition for an audit of an attorney's accounts filed pursuant to Rule 16-722 and records and proceedings other than proceedings in the Court of Appeals on that petition.

(c) Public Proceedings and Records

The following records and proceedings are public and open to inspection:

(1) except as otherwise provided in subsection (b)(7) of this Rule, a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition;

(2) an affidavit filed pursuant to Rule 16-772 that consents to discipline and an order that disbars, suspends, or reprimands the attorney by consent;

(3) a reprimand issued by the Commission pursuant to Rule 16-737; and

(4) except as otherwise provided by order of the Court of Appeals, all proceedings under this Chapter in the Court of Appeals.

(d) Required Disclosure to Disciplinary Authorities

If an attorney resigns or is reprimanded, convicted of a serious crime, or, by order of the Court of Appeals, disbarred, suspended, reinstated, or transferred to inactive status, Bar Counsel shall notify the National Lawyer Regulatory Data Bank of the American Bar Association and the disciplinary authority of every other jurisdiction in which the attorney is admitted to practice.

(e) Permitted Disclosure

(1) Written Waiver of Attorney

If the attorney has signed a written waiver of confidentiality, the Commission or Bar Counsel may disclose information to the extent permitted by the waiver.

(2) In Preparation for a Hearing

The parties to a disciplinary or remedial action may use confidential information other than the records and proceedings of a Peer Review Panel to the extent reasonably necessary to prepare for a public hearing in the action but shall preserve the confidentiality of the information in all other respects.

(3) Communications With Complainant

Upon request of a complainant, Bar Counsel may disclose to the complainant the status of an investigation and of any disciplinary or remedial proceedings resulting from information from the complainant.

(4) Requests by Authorities

Upon receiving a request that complies with this subsection, the Commission or Bar Counsel may disclose the pendency, subject matter, status, and disposition of disciplinary or remedial proceedings involving an attorney or former attorney that did not result in dismissal. The request must be made in writing by a judicial nominating commission, a bar admission authority, the President of the United States, the Governor of a state, territory, or district of the United States, or a committee of the General Assembly of Maryland or of the United States Congress. The requesting entity must represent that it is considering the nomination, appointment,

confirmation, approval, or admission to practice of the attorney, or former attorney, and that the information will be treated as confidential and without the consent of the attorney may not be copied or disclosed to anyone other than the requesting entity.

(5) Explanatory Statements

The Chair of the Commission may issue a brief explanatory statement necessary to correct any public misperception about actual or possible proceedings.

(6) Subpoena or Court Order

If satisfied that an attorney has received prior notice and an opportunity to object or move for a protective order, Bar Counsel may comply with a subpoena or order of a court of this State or the United States to produce records and disclose confidential information concerning the attorney.

(7) Information Involving Criminal Activity

With the approval of the Chair of the Commission, Bar Counsel may provide to law enforcement and prosecuting officials information involving criminal activity, including information requested by a subpoena from a grand jury pursuant to Rule 4-643.

(8) Other Disciplinary Authorities

With the approval of the Chair of the Commission, Bar Counsel may provide to the disciplinary authority of any other jurisdiction in which an attorney is admitted to practice records and other confidential information concerning the attorney.

(9) Summarized Information

In order to improve the administration of justice, the Commission and Bar Counsel may publish reports and summaries of confidential investigations, charges, and disciplinary or remedial proceedings, provided that the identity of attorneys, complainants, and witnesses is not revealed.

Source: This Rule is derived in part from former Rule 16-708 (BV8).
Rule 16-724. SERVICE OF PAPERS ON ATTORNEY

(a) Statement of Charges

A copy of a Statement of Charges filed pursuant to Rule 16-741 shall be served on an attorney in the manner prescribed by Rule 2-121. If after reasonable efforts the attorney cannot be served personally, service may be made upon the treasurer of the Clients' Security Trust Fund, who shall be deemed the attorney's agent for receipt of service. The treasurer shall send, by both certified mail and ordinary

mail, a copy of the papers so served to the attorney at the address maintained in the Trust Fund's records and to any other address provided by Bar Counsel.

(b) Service of Other Papers

Except as otherwise provided in this Chapter, other notices and papers may be served on an attorney in the manner provided by Rule 1-321 for service of papers after an original pleading.

Committee note: The attorney's address contained in the records of the Clients' Security Trust Fund may be the attorney's last known address.

Cross reference: See Rule 16-753 concerning service of a Petition for Disciplinary or Remedial Action.

Source: This Rule is in part derived from former Rule 16-706 (BV6) and in part new.

Rule 16-731. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Complaints

A complaint alleging that an attorney has engaged in professional misconduct or is incapacitated shall be in writing and sent to Bar Counsel. Any written communication that includes the name and address of the person making the communication and states facts which, if true, would constitute professional misconduct by or demonstrate incapacity of an attorney constitutes a complaint. Bar

Counsel also may initiate a complaint based on information from other sources.

(b) Review of Complaint

(1) Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous or unfounded.

(2) If Bar Counsel concludes that the complaint is either frivolous or unfounded or does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, Bar Counsel shall dismiss the complaint and notify the complainant of the dismissal. Otherwise, Bar Counsel shall (A) open a file on the complaint, (B) acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

Committee note: Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the

complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and address of the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 16-724 (b).

(2) Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under Rule 16-771, 16-773, or 16-774.

(d) Time for Completing Investigation

Unless the time is extended by the Commission for good cause, Bar Counsel shall complete an investigation within 90 days after opening the file on the complaint. Upon written request by Bar Counsel establishing good cause for an extension for a specified period, the Commission may grant one or more extensions. The Commission may not grant an

extension, at any one time, of more than 60 days unless it finds specific good cause for a longer extension. If an extension exceeding 60 days is granted, Bar Counsel shall provide the Commission with a status report at least every 60 days. For failure to comply with the time requirements of this section, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is new.

Rule 16-732. INVESTIGATIVE SUBPOENA

(a) Approval and Issuance

(1) The Chair of the Commission may authorize Bar Counsel to issue a subpoena to compel the attendance of witnesses and the production of designated documents or other tangible things at a time and place specified in the subpoena if the Chair finds that (A) the subpoena is necessary to and in furtherance of an investigation being conducted by Bar Counsel pursuant to Rule 16-731 or (B) the subpoena has been requested by a disciplinary authority of another jurisdiction pursuant to the law of that jurisdiction for use in a disciplinary or remedial proceeding in that jurisdiction to determine alleged

professional misconduct or incapacity of a lawyer subject to the jurisdiction of that disciplinary authority.

(2) Upon approval, Bar Counsel may issue the subpoena.

(b) Contents

A subpoena shall comply with the requirements of Rule 2-510 (c), except that to the extent practicable, a subpoena shall not identify the attorney under investigation. A subpoena to compel attendance of a witness shall include or be accompanied by a notice that the witness (1) has the right to consult with an attorney with respect to the assertion of a privilege or any other matter pertaining to the subpoena and (2) may file a motion for judicial relief under Rule 2-510.

(c) Service

Except for service upon an attorney in accordance with Rule 16-724 (b), a subpoena shall be served in accordance with Rule 2-510. Promptly after service of a subpoena on a person other than the attorney under investigation and in addition to giving any other notice required by law, Bar Counsel shall serve a copy of the subpoena on the attorney under investigation.

Cross reference: For examples of other notice required by law, see Code, Financial Institutions Article, §1-304, concerning notice to depositors of subpoenas for financial records; Code, Health General Article, §4-306 concerning disclosure of medical records, and Code, Health General Article, §4-307, concerning notice of a request for issuance

of compulsory process seeking medical records related to mental health services.

(d) Objection

The person served with the subpoena or the attorney under investigation may file a motion in the circuit court for the county in which the subpoena was served for any order permitted by Rule 2-510 (e). The motion shall be filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance.

(e) Enforcement

On the motion of Bar Counsel, the court may enforce compliance with the subpoena.

(f) Confidentiality

Any paper filed in court with respect to a subpoena shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any motion shall be on the record and shall be conducted out of the presence of all persons other than Bar Counsel, the attorney, and those persons whose presence the court deems necessary.

(g) Recording of Statements

Everything said by the witness at the time and place specified in the subpoena shall be contemporaneously recorded

stenographically or electronically, and the witness shall be placed under oath.

Source: This Rule is new.

Rule 16-733. PERPETUATION OF EVIDENCE BEFORE PETITION FOR
DISCIPLINARY OR REMEDIAL ACTION

Before a Petition for Disciplinary or Remedial Action is filed, Bar Counsel or an attorney who is or may be the subject of an investigation by Bar Counsel may perpetuate testimony or other evidence relevant to a claim or defense that may be asserted in the expected action. The perpetuation of evidence shall be governed by Rule 2-404 and the issuance of subpoenas and protective orders shall be governed by Rules 2-510 and 2-403. The Commission shall perform the functions that the court performs under those Rules.

Source: This Rule is new.

Rule 16-734. PROCEDURE UPON COMPLETION OF INVESTIGATION

Upon completion of an investigation, Bar Counsel shall take one of the following actions:

(a) recommend to the Commission dismissal of the complaint or termination of the proceeding without discipline, with or without a warning, in accordance with Rule 16-735;

(b) recommend to the Commission approval of a Conditional Diversion Agreement signed by Bar Counsel and the attorney in accordance with Rule 16-736;

(c) recommend to the Commission a reprimand in accordance with Rule 16-737;

(d) file with the Commission a Statement of Charges with an election for peer review in accordance with Rule 16-741; or

(e) recommend to the Commission the immediate filing of a Petition for Disciplinary or Remedial Action, with or without collateral remedial proceedings, in accordance with Rules 16-771, 16-773, or 16-774.

Source: This Rule is new. Rule 16-735. DISMISSAL OR OTHER TERMINATION OF COMPLAINT

(a) Dismissal or Termination

(1) Upon completion of an investigation, Bar Counsel may recommend to the Commission that:

(A) the complaint be dismissed because Bar Counsel has concluded that the evidence fails to show that the attorney has engaged in professional misconduct or is incapacitated; or

(B) the disciplinary or remedial proceeding be terminated, with or without a warning, because Bar Counsel has concluded that any professional misconduct on the part of the

attorney (i) was not sufficiently serious to warrant discipline and (ii) is not likely to be repeated.

(2) If satisfied with Bar Counsel's recommendation, the Commission shall dismiss the complaint or otherwise terminate the disciplinary or remedial proceeding, as appropriate. If Bar Counsel has recommended a warning, the matter shall proceed as provided in section (b) of this Rule.

(b) Termination Accompanied by Warning

(1) If Bar Counsel concludes that the attorney may have engaged in some professional misconduct, that the conduct was not sufficiently serious to warrant discipline, but that a specific warning to the attorney would be helpful to ensure that the conduct is not repeated, Bar Counsel may recommend that the termination be accompanied by a warning against repetition. If satisfied with the recommendation, the Commission shall proceed in accordance with subsection (b)(2) of this Rule and, if the warning is not rejected, accompany the termination of the disciplinary or remedial proceeding with a warning. A warning does not constitute discipline, but the complainant shall be notified that termination of the proceeding was accompanied by a warning against repetition of the conduct.

(2) At least 30 days before a warning is issued, the Commission shall mail to the attorney a notice that states the date on which it intends to issue the warning and the content of the warning. No later than five days before the intended date of issuance of the warning, the attorney may reject the warning by filing a written rejection with the Commission. If the warning is not rejected, the Commission shall issue it on or after the date stated in the initial notice to the attorney. If the warning is rejected, it shall not be issued, and Bar Counsel may take any other action permitted under this Chapter. Neither the fact that a warning was proposed or rejected nor the contents of a warning that was not issued may be admitted into evidence.

(c) Effect of Dismissal or Termination

(1) Except as provided in subsection (c)(2) of this Rule, a dismissal or a termination under this Rule, with or without a warning, shall not be disclosed by Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding. The nature and existence of a proceeding terminated under this Rule, including any investigation by Bar Counsel that led to the proceeding, need not be disclosed by an attorney in response to a request for information as to whether the

attorney has been the subject of a disciplinary or remedial proceeding. (2) The fact that a warning was issued in conjunction with the termination of a complaint shall be disclosed to the complainant and may be disclosed in a subsequent proceeding against the attorney when relevant to a subsequent complaint based on similar misconduct.

Source: This Rule is new. Rule 16-736. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

Upon completing an investigation, Bar Counsel may agree to a Conditional Diversion Agreement if Bar Counsel concludes that:

(1) the attorney committed professional misconduct or is incapacitated;

(2) the professional misconduct or incapacity was not the result of any wilful or dishonest conduct and did not involve conduct that could be the basis for an immediate Petition for Disciplinary or Remedial Action pursuant to Rules 16-771, 16-773, or 16-774;

(3) the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through alternative programs or mechanisms, including (A) medical, psychological, or other professional treatment, counseling, or

assistance, (B) appropriate educational courses or programs, (C) mentoring or monitoring services, or (D) dispute resolution programs; and

(4) the public interest and the welfare of the attorney's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately with a disciplinary or remedial proceeding, the attorney agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it.

Committee note: Examples of conduct that may be susceptible to conditional diversion include conduct arising from (A) unfamiliarity with proper methods of law office management, record-keeping, or accounting, (B) unfamiliarity with particular areas of law or legal procedure, (C) negligent management of attorney trust accounts or other financial matters, (D) negligent failure to maintain proper communication with clients, (E) negligent failure to provide proper supervision of employees, or (F) emotional stress or crisis or abuse of alcohol or other drugs.

(b) Voluntary Nature of Agreement; Effect of Rejection or Disapproval

Neither Bar Counsel nor an attorney is required to propose or enter into a Conditional Diversion Agreement. The Agreement shall state that the attorney voluntarily consents to its terms and promises to pay all expenses reasonably incurred in connection with its performance and enforcement. If a Conditional Diversion Agreement is proposed and rejected or if a signed Agreement is not approved by the Commission,

Bar Counsel may take any other action permitted under this Chapter. Neither the fact that an Agreement was proposed, rejected, or not approved nor the contents of the Agreement may be admitted into evidence.

(c) Terms of Conditional Diversion Agreement

(1) A Conditional Diversion Agreement shall be in writing and signed by Bar Counsel, the attorney, and any monitor designated in the Agreement.

(2) The Agreement shall recite the basis for it, as set forth in section (a) of this Rule. By signing the Agreement, the attorney (A) acknowledges that the attorney has engaged in conduct that constitutes professional misconduct or is currently incapacitated, and (B) warrants that the attorney has not concealed from or misrepresented to Bar Counsel any material facts pertaining to the attorney's conduct or the Agreement.

(3) The Agreement shall state the particular course of remedial action that the attorney agrees to follow and a time for the performance or completion of that action. The Agreement is expressly conditioned on the attorney's not engaging in any further conduct that would constitute professional misconduct and may provide for any program or corrective action appropriate under the circumstances, including:

- (A) mediation or binding arbitration of a fee dispute;
 - (B) restitution of unearned or excessive fees in a stipulated amount;
 - (C) public apology to designated individuals;
 - (D) law office management assistance, including temporary or continuing monitoring, mentoring, accounting, bookkeeping, financial, or other professional assistance, and completion of specific educational programs dealing with law office management;
 - (E) completion of specific legal education courses or curricula, including courses in legal ethics and professional responsibility;
 - (F) agreement not to practice in specific areas of the law (i) unless the attorney associates himself or herself with one or more other attorneys who are proficient in those areas, or (ii) until the attorney has successfully completed a designated course of study to improve the attorney's proficiency in those areas;
 - (G) specific course of treatment for emotional distress, mental disorder or disability, or dependence on alcohol or other drugs; and
 - (H) stipulated number of hours of pro bono legal services.
- (4) The Agreement shall provide for a stay of

any disciplinary or remedial proceeding pending satisfactory performance by the attorney. The Agreement may designate either a private monitor engaged at the attorney's expense or Bar Counsel to supervise performance and compliance. The Agreement shall authorize the monitor to request and receive all information and inspect any records necessary to verify compliance and, if a private monitor is selected, to report any violation or noncompliance to Bar Counsel. The Agreement shall specify the fees of any private monitor and the method and frequency of payment of those fees.

(d) Approval by Commission

A Conditional Diversion Agreement is not valid until approved by the Commission. Upon signing the Agreement, Bar Counsel and the attorney shall submit to the Commission the Agreement, any explanatory material that they believe relevant, and any further information that the Commission requests. The Commission may:

- (1) approve the Agreement if satisfied that it is reasonable and in the public interest;
- (2) disapprove the Agreement if not convinced that it is reasonable and in the public interest; or
- (3) recommend amendments to the Agreement as a condition of approval, which the parties may accept or reject. If Bar

Counsel and the attorney accept the amendments, they shall notify the Commission of the acceptance, and the Commission shall then approve the Agreement. If either party rejects a proposed amendment, the Agreement shall be deemed disapproved.

(e) Amendment of Agreement

A Conditional Diversion Agreement may be amended from time to time in a writing signed by Bar Counsel and the attorney and approved by the Commission.

(f) Revocation of Agreement

(1) Bar Counsel may declare a proposed default on a Conditional Diversion Agreement if Bar Counsel determines that the attorney (A) engaged in further professional misconduct while subject to the agreement, (B) wilfully misrepresented or concealed material facts during the negotiation of the Agreement that induced Bar Counsel to recommend approval of the Agreement, or (C) has failed in a material way to comply with the Agreement. Bar Counsel shall give written notice to the attorney of the proposed default and afford the attorney a reasonable opportunity to refute the determination.

(2) If the attorney fails to refute the charge or to offer an explanation or proposed remedy satisfactory to Bar Counsel, Bar Counsel shall file a petition with the Commission to revoke the Agreement and serve a copy of the petition on

the attorney. The attorney may file a written response with the Commission within 15 days after service of the petition. The Commission may act upon the petition and response or may request the parties to supply additional information, in writing or in person.

(3) If the Commission concludes that the attorney is in material default of the Agreement, it shall revoke the Agreement, revoke the stay of the disciplinary or remedial proceeding, and direct Bar Counsel to proceed in accordance with Rule **16-751**, or as otherwise authorized by the Rules in this Chapter.

(g) Satisfaction of Agreement

If Bar Counsel determines that the attorney has complied in full with the requirements of the Agreement and that the disciplinary or remedial proceeding should be terminated, Bar Counsel shall inform the Commission and request that the disciplinary or remedial proceeding be terminated. If satisfied with Bar Counsel's recommendation, the Commission shall terminate the disciplinary or remedial proceeding.

(h) Effect of Agreement

(1) Approval by the Commission of a Conditional Diversion Agreement does not constitute discipline.

(2) Except as provided in subsections (h)(4) and (h)(5) of this Rule, the contents of the Agreement are confidential and may not be disclosed.

(3) Upon approval of an Agreement by the Commission, Bar Counsel shall inform the complainant that such an Agreement has been entered into and approved, that the disciplinary or remedial proceeding has been stayed in favor of the Agreement, and that, if the attorney complies with the Agreement, the proceeding will be terminated. The complainant shall also be notified of the potential for and consequences of noncompliance. Except to the extent that the Agreement requires the transfer of property to the complainant or other communication with the complainant, the terms of the Agreement shall not be disclosed. (4) Upon revocation of an

Agreement pursuant to section (f) of this Rule, the contents of the Agreement lose their confidentiality and may be disclosed in any ensuing disciplinary or remedial proceeding.

(5) The contents of an Agreement may be disclosed in a subsequent proceeding against the attorney when relevant to a subsequent complaint based on similar misconduct.

Source: This Rule is new.

Rule 16-737. REPRIMAND BY COMMISSION

(a) Offer

If Bar Counsel determines after completion of an investigation that an attorney has engaged in professional misconduct and that the appropriate sanction for the misconduct is a reprimand, Bar Counsel shall serve on the attorney a written offer to administer a reprimand and enter into a joint waiver of further disciplinary or remedial proceedings. The offer shall include the text of the proposed reprimand, the date when the offer will expire, a stipulation for waiving further disciplinary or remedial proceedings, and advice that the offer, if accepted, is subject to approval by the Commission. The text of the proposed reprimand shall summarize the misconduct for which the reprimand is to be imposed and include a reference to any rule, statute, or other law allegedly violated by the attorney.

(b) Response

The attorney may accept the offer by signing the stipulation, endorsing the proposed reprimand, and delivering both documents to Bar Counsel within the time stated in the notice or otherwise agreed to by Bar Counsel. The attorney may (1) reject the offer expressly or by declining to return the documents timely, or (2) propose amendments to the proposed reprimand, which Bar Counsel may accept, reject, or negotiate.

(c) Action by Commission

If the parties agree to a reprimand, they shall submit the proposed reprimand to the Commission for approval. The parties may submit also any explanatory material that they believe relevant and shall submit any further material that the Commission requests. Upon the submission, the Commission may take any of the following actions:

(1) the Commission may approve the reprimand, if satisfied that it is appropriate under the circumstances, in which event Bar Counsel shall promptly administer the reprimand to the attorney and terminate the disciplinary or remedial proceeding.

(2) the Commission may recommend amendments to the reprimand as a condition of approval, which the parties may accept or reject. If the parties accept the amendments, they shall notify the Commission of the acceptance, and the Commission shall then approve the reprimand. If either party rejects a proposed amendment, the reprimand shall be deemed disapproved.

(3) the Commission may disapprove the reprimand, if not satisfied that it is appropriate under the circumstances and direct Bar Counsel to proceed in another manner.

(d) Effect of Rejection or Disapproval

If a reprimand is proposed and rejected or if a reprimand to which the parties have stipulated is not approved by the Commission, the proceeding shall resume as if no reprimand had been proposed, and neither the fact that a reprimand was proposed, rejected, or not approved nor the contents of the reprimand and any stipulation may be admitted into evidence.

(e) Effect of Reprimand

A reprimand constitutes discipline.

Source: This Rule is new.

Rule 16-741. STATEMENT OF CHARGES

(a) Filing of Statement of Charges

(1) Upon completion of an investigation, Bar Counsel shall file with the Commission a Statement of Charges if Bar Counsel determines that:

(A) the attorney either engaged in conduct constituting professional misconduct or is incapacitated;

(B) the professional misconduct or the incapacity does not warrant an immediate Petition for Disciplinary or Remedial Action;

(C) a Conditional Diversion Agreement is either not appropriate under the circumstances or the parties were unable to agree on one; and

(D) a reprimand is either not appropriate under the circumstances or (i) one was offered and rejected by the attorney, or (ii) a proposed reprimand was disapproved by the Commission and Bar Counsel was directed to file a Statement of Charges.

(2) Bar Counsel shall include with the Statement of Charges a fair summary of the evidence developed through the investigation, including any response that the attorney sent to Bar Counsel regarding the matter.

(b) Service of Statement of Charges; Peer Review

Bar Counsel shall serve on the attorney and send to the Chair of the Peer Review Committee a copy of the Statement of Charges, together with the supporting documentation filed pursuant to subsection (a)(2) of this Rule. The matter shall then proceed in accordance with Rules 16-742 and 16-743.

Cross reference: See Rule 16-724 (a) concerning service of the Statement of Charges on the attorney.

Source: This Rule is new. Rule 16-742. PEER REVIEW PANEL

(a) Appointment

Within 30 days after receiving a copy of a Statement of Charges filed with the Commission, the Chair of the Peer Review Committee shall (1) appoint a Peer Review Panel, (2) notify the Commission, Bar Counsel, and the attorney of the

appointment of the Panel and the names and addresses of its members, (3) send to the members of the Panel a copy of the Statement of Charges and the supporting material filed by Bar Counsel with the Commission, and (4) in accordance with Rule 16-743 (b), schedule a meeting of the Peer Review Panel.

(b) Composition of Panel

The Peer Review Panel shall consist of at least three members of the Peer Review Committee. A majority of the members of the Panel shall be attorneys, but at least one member shall not be an attorney. If practicable, the Chair shall appoint to the Panel members from the circuit in which the attorney who is the subject of the charges has an office for the practice of law or, if there is no such office, the circuit in which the last known address of the attorney, as reflected on the records of the Clients' Security Trust Fund, is located.

(c) Panel Chair

The Chair of the Peer Review Committee shall appoint an attorney member of the Panel as the Panel Chair.

(d) Removal and Recusal of Members

The Chair of the Peer Review Committee may remove a member of the Peer Review Panel for cause. A member of a Peer ReviewPanel shall not participate in any proceeding in which

the member's impartiality might reasonably be questioned. A member who is required to recuse or who cannot attend the Peer Review meeting shall immediately notify the Chair of the Peer Review Committee, who shall promptly appoint another member.

(e) Quorum

The presence of any three members of the Peer Review Panel constitutes a quorum, whether or not a non-attorney member is present. With the consent of the Panel members who are present, Bar Counsel and the attorney may waive the quorum requirement. The concurrence of a majority of the members present is necessary to a recommendation to the Commission.

Source: This Rule is new. Rule 16-743. PEER REVIEW PROCESS

(a) Purpose of Peer Review Process

The purpose of the peer review process is for the Peer Review Panel to consider the Statement of Charges and all relevant information offered by Bar Counsel and the attorney concerning it and to determine (1) whether the Statement of Charges has a substantial basis and there is reason to believe that the attorney has committed professional misconduct or is incapacitated, and, (2) if so, whether a Petition for Disciplinary or Remedial Action should be filed or some other disposition is appropriate. The peer review process is not intended to be an adversarial one and it is not the function

of Peer Review Panels to hold evidentiary hearings, adjudicate facts, or write full opinions or reports.

Committee note: If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the lawyer, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and facilitative dialogue, (A) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the lawyer and the complainant, and (B) to encourage the lawyer to recognize any deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the lawyer or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for a constructive solution. The objective views of two fellow lawyers and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the lawyer (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

(b) Scheduling of Meeting; Notice to Attorney (1) The Chair of the Peer Review Committee, after consultation with the members of the Peer Review Panel, Bar Counsel, and the attorney, shall schedule a meeting of the Panel.

(2) If, without substantial justification, the attorney does not agree to schedule a meeting within the time provided in subsection (b)(5) of this Rule, the Chair may recommend to the Commission that the peer review process be terminated. If the Commission terminates the peer review process pursuant to this subsection, the Commission may take any action that could

be recommended by the Peer Review Panel under section (e) of this Rule.

(3) The Chair shall notify Bar Counsel, the attorney, and each complainant of the time, place, and purpose of the meeting and invite their attendance.

(4) The notice to the attorney shall inform the attorney of the attorney's right to respond in writing to the Statement of Charges by filing a written response with the Commission and sending a copy of it to Bar Counsel and each member of the Peer Review Panel at least ten days before the scheduled meeting.

(5) Unless the time is extended by the Commission, the meeting shall occur within 60 days after appointment of the Panel.

(c) Meeting

(1) The Peer Review Panel shall conduct the meeting in an informal manner. It shall allow Bar Counsel, the attorney, and each complainant to explain their positions and offer such supporting information as the Panel finds relevant. Upon request of Bar Counsel or the attorney, the Panel may, but need not, hear from any other person. The Panel is not bound by any rules of evidence, but shall respect lawful privileges. The Panel may exclude a complainant after listening to the

complainant's statement and, as a mediative technique, may consult separately with Bar Counsel or the attorney. The Panel may meet in private to deliberate.

(2) If the Panel determines that the Statement of Charges has a substantial basis and that there is reason to believe that the attorney has committed professional misconduct or is incapacitated, the Panel may (A) conclude the meeting and make an appropriate recommendation to the Commission or (B) inform the parties of its determination and allow the attorney an opportunity to consider a reprimand or a Conditional Diversion Agreement.

(3) The Panel may schedule one or more further meetings, but, unless the time is extended by the Commission, it shall make a recommendation to the Commission within 90 days after appointment of the Panel. If a recommendation is not made within that time or any extension granted by the Commission, the peer review process shall be terminated and the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(d) Ex Parte Communications

Except for administrative communications with the Chair of the Peer Review Committee and as allowed under subsection (c)(1) as part of the peer review meeting process, no member

of the Panel shall participate in an ex parte communication concerning the substance of the Statement of Charges with Bar Counsel, the attorney, the complainant, or any other person.

(e) Recommendation

The Peer Review Panel may make any recommendation to the Commission that Bar Counsel may make under Rule 16-734 (a), (b), (c), or (e). The Panel shall accompany its recommendation with a brief explanatory statement.

(f) Action by Commission

The Commission may take any action on the recommendation that it may take on a similar recommendation made by Bar Counsel under Rule 16-734.

Source: This Rule is new.

Rule 16-751. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of Disciplinary or Remedial Action

Upon approval of the Commission, Bar Counsel shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

Cross reference: See Rule 16-723 (b)(7) concerning confidentiality of a petition to place an incapacitated attorney on inactive status.

(b) Parties

The petition shall be filed in the name of the Commission, which shall be called the petitioner. The attorney shall be called the respondent.

(c) Form of Petition

The petition shall be sufficiently clear and specific to inform the respondent of any professional misconduct charged and the basis of any allegation that the respondent is incapacitated and should be placed on inactive status.

Source: This Rule is derived from former Rules 16-709 (BV9) and 16-711 b 2 (BV11 b 2).
Rule 16-752. ORDER DESIGNATING JUDGE

(a) Order

Upon the filing of a Petition for Disciplinary or Remedial Action, the Court of Appeals may enter an order designating a judge of any circuit court to hear the action and the clerk responsible for maintaining the record. The order of designation shall require the judge, after consultation with Bar Counsel and the attorney, to enter a scheduling order defining the extent of discovery and setting dates for the completion of discovery, filing of motions, and hearing.

(b) Service of Petition and Order

Upon entry of an order under section (a) of this Rule, the clerk of the Court of Appeals shall send two copies to Bar

Counsel. Bar Counsel shall serve a copy of the order and a copy of the petition on the respondent. The copies shall be served in accordance with Rule 16-753 or as otherwise ordered by the Court of Appeals.

(c) Motion to Amend Order

Within 15 days after the respondent has been served, either party may file a motion in accordance with Rule 8-431 requesting that the Court of Appeals designate another judge. The motion shall not stay the time for filing an answer to the petition.

Source: This Rule is derived from former Rules 16-709 b (BV9 b), 16-709 e 1 (BV9 e 1) and 16-710 c (BV10 c).

Rule 16-753. SERVICE OF PETITION

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule 16-751, and the order of the Court of Appeals designating a judge pursuant to Rule 16-752, shall be served on an attorney in the manner prescribed by Rule 2-121 or in any other manner directed by the Court of Appeals. If after reasonable efforts the attorney cannot be served personally, service may be made upon the treasurer of the Clients' Security Trust Fund, who shall be deemed the attorney's agent for receipt of service. The treasurer shall send, by both certified mail and ordinary mail, a copy of the

papers so served to the attorney at the address maintained in the Trust Fund's records and to any other address provided by Bar Counsel.

Source: This Rule is in part derived from former Rule 16-709 (BV9) and in part new.

Rule 16-754. ANSWER

(a) Timing; Contents

Within 15 days after being served with the petition, unless a different time is ordered, the respondent shall file with the designated clerk an answer to the petition and serve a copy on the petitioner. Sections (c) and (e) of Rule 2-323 apply to the answer. Defenses and objections to the petition, including insufficiency of service, shall be stated in the answer and not by preliminary motion.

(b) Procedural Defects

It is not a defense or ground for objection to a petition that procedural defects may have occurred during disciplinary or remedial proceedings prior to the filing of the petition.

(c) Failure to Answer

If the time for filing an answer has expired and the respondent has failed to file an answer in accordance with

section (a) of this Rule, the court shall treat the failure as a default and the provisions of Rule 2-613 shall apply.

Source: This Rule is derived from former Rules 16-709 e (BV9 e) and 16-710 b (BV10 b) and is in part new.

Rule 16-755. AMENDMENTS TO PLEADINGS

A party may amend a petition or an answer in accordance with the applicable provisions of Rule 2-341.

Source: This Rule is new.

Rule 16-756. DISCOVERY

After a Petition for Disciplinary or Remedial Action has been filed, discovery is governed by Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule 16-752 (a).

Source: This Rule is derived from former Rule 16-710 a (BV10 a).

Rule 16-757. JUDICIAL HEARING

(a) Generally

The hearing of a disciplinary or remedial action is governed by the rules of evidence and procedure applicable to a court trial in a civil action tried in a circuit court.

Unless extended by the Court of Appeals, the hearing shall be

completed within 120 days after service on the respondent of the order designating a judge. Before the conclusion of the hearing, the judge may permit any complainant to testify, subject to cross-examination, regarding the effect of the alleged misconduct. A respondent attorney may offer, or the judge may inquire regarding, evidence otherwise admissible of any remedial action undertaken relevant to the allegations. Bar Counsel may respond to any evidence of remedial action.

(b) Burdens of Proof

The petitioner has the burden of proving the averments of the petition by clear and convincing evidence. A respondent who asserts an affirmative defense or a matter of mitigation or attenuation has the burden of proving the defense or matter by a preponderance of the evidence.

(c) Findings and Conclusions

The judge shall file or dictate into the record a statement of the judge's findings of fact, including findings as to any evidence regarding remedial action, and conclusions of law. If dictated into the record, the statement shall be promptly transcribed. Unless the time is extended by the Court of Appeals, the written or transcribed statement shall be filed with the clerk responsible for the record no later

than 45 days after the conclusion of the hearing. The clerk shall mail a copy of the statement to each party.

(d) Transcript

The petitioner shall cause a transcript of the hearing to be prepared and included in the record.

(e) Transmittal of Record

Unless a different time is ordered by the Court of Appeals, the clerk shall transmit the record to the Court of Appeals within 15 days after the statement of findings and conclusions is filed.

Source: This Rule is derived from former Rules 16-710 d (BV10 d) and 16-711 a and b 1 (BV11 a and b 1).

Rule 16-758. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

Upon receiving the record, the Clerk of the Court of Appeals shall notify the parties that the record has been filed.

(b) Exceptions; Recommendations

Within 15 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge and (2) recommendations concerning the appropriate disposition under Rule 16-759 (c).

(c) Response

Within 15 days after service of exceptions or recommendations, the adverse party may file a response.

(d) Form

The parties shall file eight copies of any exceptions, recommendations, and responses. The copies shall conform to the requirements of Rule 8-112.

Source: This Rule is derived in part from former Rule 16-711 (BV11) and is in part new.
Rule 16-759. DISPOSITION

(a) Oral Argument

The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522.

(b) Review by Court of Appeals

(1) Conclusions of Law

The Court of Appeals shall review de novo the circuit court judge's conclusions of law.

(2) Findings of Fact

(A) If No Exceptions Are Filed

If no exceptions are filed, the Court may treat the findings of fact as established for the purpose of determining appropriate sanctions, if any.

(B) If Exceptions Are Filed

If exceptions are filed, the Court of Appeals shall determine whether the findings of fact have been proven by the requisite standard of proof set out in Rule 16-757 (b). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses.

(c) Disposition

The Court of Appeals may order (1) disbarment, (2) suspension, (3) reprimand, (4) inactive status, (5) dismissal of the disciplinary or remedial action, or (6) a remand for further proceedings. (d) Decision

The decision of the Court of Appeals is final. The decision shall be evidenced by an order which the clerk shall certify under the seal of the Court. The order may be accompanied by an opinion.

Source: This Rule is derived in part from former Rule 16-711 (BV11) and is in part new.
Rule 16-760. ORDER IMPOSING DISCIPLINE OR INACTIVE STATUS

(a) Effective Date of Order

Unless otherwise stated in the order, an order providing for the disbarment, suspension, or reprimand of a

respondent or the placement of a respondent on inactive status shall take effect immediately. The order may provide that the disbarment, suspension, reprimand, or placement on inactive status be deferred for a specified period of time to allow the respondent a reasonable opportunity to comply with the requirements of section (c) of this Rule.

(b) Reprimand

Unless accompanied by a reported opinion, an order that reprimands the respondent shall summarize the misconduct for which the reprimand is imposed, include specific reference to any rule or statute violated by the respondent, and state any conditions imposed upon the respondent pursuant to section (h) of this Rule.

(c) Duties of Respondent

Unless otherwise stated in the order, an order that disbars or suspends a respondent or places a respondent on inactive status shall operate as an immediate directive that the respondent perform each of the following duties in a timely manner:

(1) The respondent shall not accept any new clients or undertake any new or further representation of existing clients.

(2) The respondent shall take any action necessary to protect current clients. (3) The respondent shall conclude any current client matters that can be concluded within 15 days after the date of the order.

(4) Within 15 days after the date of the order, the respondent shall supply to Bar Counsel or an attorney designated by Bar Counsel a list of the attorney's clients (by name, address, and telephone number) whose legal matters have not been concluded by the respondent and identify any client matters (by name, tribunal, and docket reference) currently pending in any court or agency.

(5) Within 15 days after the date of the order, the respondent shall mail a letter to each client whose legal matter has not been concluded, to counsel for any other party or to any unrepresented party in a pending action or proceeding, and to all attorneys with whom the respondent is associated in the practice of law, notifying each of them of the order and the fact that the respondent will be unable to practice law after the effective date of the order. The respondent shall supply copies of the letters to Bar Counsel or an attorney designated by Bar Counsel.

(6) Within 30 days after the date of the order, the respondent shall withdraw from all client matters.

(7) Unless suspended for a definite period of not more than one year, the respondent shall promptly request the publisher of any telephone directory or law listing to remove any listing or reference that suggests that the respondent is eligible to practice law.

(8) The respondent shall deliver promptly to clients with pending matters any papers or other property to which the clients are entitled or notify the clients and any co-counsel of asuitable time and place to obtain the papers and other property and call attention to any urgent need to obtain them.

(9) The respondent shall promptly notify the disciplinary authority in each jurisdiction in which the respondent is admitted to practice of the disciplinary sanction imposed by the Court of Appeals.

(10) Within 30 days of the effective date of the order, the respondent shall file with the Commission an affidavit that states (A) the manner and extent to which the respondent has complied with the order and the provisions of this section, (B) the names of all state and federal jurisdictions in which and administrative agencies before which the respondent has been admitted to practice, (C) the residence and any other address of the respondent to which future communications may be directed, (D) the policy number and the

name and address of each insurer that provided malpractice insurance coverage to the respondent during the past five years and the inclusive dates of coverage, and (E) the date and manner that a copy of the affidavit required by this subsection was served upon Bar Counsel. The affidavit shall be accompanied by copies of the list required by subsection (c)(4) of this Rule and the letters mailed under subsection (c)(5) of this Rule.

(11) The respondent shall maintain records of the various steps taken to comply with this section and the order of the Court of Appeals and make those records available to Bar Counsel on request.

(d) Effect of Order; Prohibited Acts After the effective date of an order that disbars or suspends a respondent or places a respondent on inactive status, the respondent may not practice law, attempt to practice law, or offer to practice law in this State either directly or through an attorney, officer, director, partner, trustee, agent, or employee. Unless otherwise stated in an order of the Court of Appeals, the respondent shall not:

(1) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and persons who

may visit the office that the respondent is not a lawyer and is not permitted to practice law;

(2) work as a paralegal for or as an employee of an attorney;

(3) use any business card, sign, or advertisement suggesting that the respondent is entitled to practice law or maintain, either alone or with another, an office for the practice of law;

(4) use any stationery, bank account, checks, or labels on which the respondent's name appears as an attorney or in connection with any office for the practice of law;

(5) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain; and

(6) share in any fees for legal services performed by another attorney after the effective date of the order, but may be compensated for the reasonable value of services rendered prior to that date.

(e) Duties of Clerk On the effective date of an order that disbars, suspends, or places the respondent on inactive status, the Clerk of the Court of Appeals shall strike the name of the respondent from the register of attorneys in that Court and shall certify that fact to the Trustees of the

Clients' Security Trust Fund and the clerks of all courts in this State.

(f) Duties of Bar Counsel

Bar Counsel shall enforce the order of the Court of Appeals and the provisions of this Rule. In enforcing section (c) of this Rule, Bar Counsel may designate an attorney to monitor the respondent's compliance and to receive the list and copies of letters described in subsections (c)(4) and (c)(5) of this Rule. If Rule 16-777 is applicable, Bar Counsel may request the appointment of a conservator in accordance with that Rule. Bar Counsel shall give the notice required by Rule 16-723 (d).

(g) Orders for Suspension or Inactive Status

(1) Definite Period

An order of the Court of Appeals that suspends the respondent from the practice of law for a definite period of time may specify any conditions to be satisfied before or after the suspension expires.

(2) Indefinite Suspension or Inactive Status

An order of the Court of Appeals that suspends the respondent from the practice of law indefinitely, or places the respondent on inactive status, may permit the respondent to apply for reinstatement in accordance with Rule 16-781 not

earlier than a specified period of time after the effective date of the order. (h) Conditions

An order entered under this Rule may impose one or more conditions to be satisfied by the respondent, whether as a condition precedent to reinstatement or a condition of probation after reinstatement, including a requirement that the respondent:

(1) demonstrate, by the report of a health care professional or other proper evidence, that the respondent is mentally and physically competent to resume the practice of law;

(2) upon reinstatement, engage an attorney satisfactory to Bar Counsel to monitor the respondent's legal practice pursuant to section (i) of this Rule;

(3) prove that every former client has been reimbursed for any part of fees paid in advance for legal services that were not completed;

(4) satisfy any judgment or reimburse the Clients' Security Trust Fund for any claim that arose out of the respondent's practice of law;

(5) make restitution to any client of any sum found to be due to the client;

(6) limit the nature or extent of the respondent's future practice of law;

(7) pay all costs assessed by the order and any mandate of the Court of Appeals;

(8) participate in a program tailored to individual circumstances that provides the respondent with law office management assistance, lawyer assistance or counseling, treatment for alcohol or substance abuse, psychological counseling, or specified courses in legal ethics, professional responsibility, or continuing legal education;

(9) issue an apology; and

(10) take any other corrective action that may be reasonable and appropriate.

(i) Monitors

An attorney engaged to monitor the respondent's legal practice pursuant to subsection (h)(2) of this Rule shall have access to client files, records of entrusted funds, and records of any attorney trust accounts maintained by the respondent. The respondent shall pay the reasonable fees and expenses of the monitor for the period of time stated in the order. The monitor shall make monthly or quarterly reports to Bar Counsel as Bar Counsel may direct.

(j) Responsibility of Affiliated Attorneys

After the effective date of an order that disbars or suspends a respondent or places a respondent on inactive status, no attorney may assist the respondent in any activity that constitutes the practice of law or in any activity prohibited under section (d) of this Rule. Upon notice of the order, an attorney affiliated with the respondent as a member of a law firm or shareholder of a professional corporation shall take reasonable action to ensure compliance with this Rule. The firm or corporation may give written notice to any client of the respondent's inability to practice law and of its willingness to represent the client with the client's consent.

Cross reference: Rule 5.5 of the Maryland Lawyers' Rules of Professional Conduct. (k) Non-Admitted Attorney

(1) Duties of Clerk and Bar Counsel

On the effective date of an order by the Court of Appeals that disbars or suspends a non-admitted attorney, the Clerk of the Court of Appeals shall place the name of that attorney on a list maintained in that Court of non-admitted attorneys who are excluded from exercising in any manner the privilege of practicing law in the State. The Clerk shall also forward a copy of the order to the clerks of all courts in this State and to the State Court Administrator and the Board of Law Examiners to be maintained with the docket of

out-of-state attorneys who are denied special admission to practice under the Rules Governing Admission to the Bar of Maryland. Bar Counsel shall give the notice required by Rule 16-723 (d).

(2) Effect of Order

After the effective date of an order entered under this section, the attorney may not practice law in this State and is disqualified from admission to the practice of law in this State. (1) Modification of Order

Upon joint stipulation or verified motion filed by the respondent, the Court of Appeals may reduce a period of suspension, waive a requirement or condition imposed by this Rule or by order, or otherwise modify an order entered under this Rule. Relief shall be denied without a hearing unless it appears from the stipulation or from clear and convincing evidence submitted with the motion that the respondent is attempting in good faith to comply with the order but that full and exact compliance has become impossible or will result in unreasonable hardship. If necessary to resolve a genuine issue of material fact, the Court may enter an order designating a judge in accordance with Rule 16-752 to hold a hearing in accordance with Rule 16-757.

(m) Sanctions for Violations

(1) Ineligibility for Reinstatement

A petition for reinstatement filed pursuant to Rule 16-781 may be dismissed if the respondent fails to demonstrate (A) substantial compliance with sections (c) and (d) of this Rule and the order of the Court of Appeals, or (B) good cause for noncompliance.

(2) Disciplinary or Remedial Action

Upon receiving information from any source that a respondent has violated sections (c) or (d) of this Rule or the order of the Court of Appeals, and in addition to any other remedy, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 16-751 based upon the violation.

(3) Injunction Against Unauthorized Practice

Upon receiving information from any source indicating that a respondent is violating section (d) of this Rule, Bar Counsel shall investigate the matter and may institute or intervene in an action in any court to enjoin the respondent from further violations.

(4) Contempt

If a respondent violates section (c) or (d) of this Rule or the order of the Court of Appeals, the Commission may request the initiation of a proceeding for constructive

criminal contempt in accordance with the provisions of Rule 15-205 and may initiate a proceeding for constructive civil contempt in accordance with the provisions of Rule 15-206.

Source: This Rule is derived in part from former Rules 16-713 (BV13) and 16-714 (BV14) and is in part new.

Rule 16-761. COSTS

(a) Allowance and Allocation

Except as provided in Rule 16-781 (o), and unless the Court of Appeals orders otherwise, the prevailing party in proceedings under this Chapter is entitled to costs. The Court, by order, may allocate costs among the parties.

(b) Judgment

Costs of proceedings under this Chapter, including the costs of all transcripts, shall be taxed by the Clerk of the Court of Appeals and included in the order as a judgment. On motion, the Court may review the action of the Clerk.

(c) Enforcement

Rule 8-611 applies to proceedings under this Chapter.

Source: This Rule is in part derived from former Rule 16-715 (BV15) and in part new.

Rule 16-771. DISCIPLINARY OR REMEDIAL ACTION UPON CONVICTION OF

CRIME

(a) Duty of Attorney Charged

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of the criminal charge. Thereafter, the attorney shall promptly notify Bar Counsel of the final disposition of the charge in each court that exercises jurisdiction over the charge.

Cross reference: Rule 16-701 (k).

(b) Petition in Court of Appeals

Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 16-751 and serve the attorney in accordance with Rule 16-753. The petition shall be filed whether the conviction resulted from a plea of guilty, nolo contendere, or a verdict after trial and whether an appeal or any other post-conviction proceeding is pending. The petition shall allege the fact of the conviction and include a request that the attorney be suspended immediately from the practice of law. A certified copy of the judgment of conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

(c) Temporary Suspension of Attorney

Upon filing of the petition pursuant to section (b) of this Rule, the Court of Appeals shall issue an order requiring the attorney to show cause within 15 days from the date of the order why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals. If, after consideration of the petition and the answer to the order to show cause, the Court of Appeals determines that the attorney has been convicted of a serious crime, the Court may enter an order suspending the attorney from the practice of law until final disposition of the disciplinary or remedial action. The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated at any stage of appellate or collateral review.

Cross reference: Rule 16-760.

(d) Statement of Charges

If the Court of Appeals denies a petition filed under section (b) of this Rule, Bar Counsel may file a Statement of Charges under Rule 16-741.

(e) Further Proceedings on Petition

When a petition filed pursuant to section (b) of this Rule alleges the conviction of a serious crime, the Court of

Appeals may enter an order designating a judge pursuant to Rule 16-752 to hold a hearing in accordance with Rule 16-757.

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall be delayed, except as provided in section (f), until the completion of appellate review. (A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial

arrangements) to attend the hearing or waives the right to attend.

(f) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection (e)(2) of this Rule and the attorney has been suspended from the practice of law under section (c) of this Rule, the attorney may request that the judge to whom the action is assigned hold an earlier hearing, at which the conviction shall be considered a final judgment.

(g) Conclusive Effect of Final Conviction of Crime

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from a plea of guilty, nolo contendere, or a verdict after trial, is conclusive evidence of the guilt of the attorney of that crime. As used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why no discipline should be imposed.

Source: This Rule is in part derived from former Rules 16-710 e (BV10 e) and 16-716 (BV16) and in part new.

Rule 16-772. CONSENT TO DISCIPLINE OR INACTIVE STATUS

(a) General Requirement

An attorney may consent to discipline or placement on inactive status in accordance with this Rule.

(b) Consent to Discipline for Misconduct

(1) Joint Petition

An attorney may consent to disbarment or other discipline by joining with Bar Counsel in a petition for an order disbarring the attorney, suspending the attorney from the practice of law, or reprimanding the attorney. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. If a suspension is requested, the petition shall state whether the suspension should be indefinite or for a stated period and shall set forth any conditions that the parties agree should be imposed. If a reprimand is requested, the petition shall state the proposed text of the reprimand and any conditions.

(2) Affidavit Required

A joint petition filed under subsection (b)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

(A) is aware that an investigation or proceeding is currently pending involving allegations of professional

misconduct, the nature of which shall be specifically set forth; (B) knows that if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct; (C) consents to the disbarment or other discipline stated in the petition;

(D) gives the consent freely and voluntarily without coercion or duress;

(E) is aware of the effects of the disbarment or other discipline to which the attorney is consenting; and

(F) agrees to comply with Rule 16-760 and any conditions stated in the petition that the Court of Appeals may impose.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and the affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, disbarring the attorney by consent from the practice of law in the State, suspending the attorney by consent from the practice of law, or reprimanding the attorney by consent and imposing any conditions stated in the petition. The provisions of Rule 16-760 apply to an order entered under this subsection.

(c) Consent to Placement On Inactive Status

(1) Joint Petition

An attorney may consent to placement on inactive status by joining with Bar Counsel in a petition for an order placing the attorney on inactive status. The petition shall be signed by the attorney and Bar Counsel and filed in the Court of Appeals. The petition shall state whether the inactive status should be indefinite or until the occurrence of a specified event and shall set forth any conditions that the parties agree should be imposed. (2) Affidavit

Required

A joint petition filed under subsection (c)(1) of this Rule shall be accompanied by an affidavit by the attorney that certifies that the attorney:

- (A) consents to the placement on inactive status;
- (B) gives the consent freely and voluntarily without coercion or duress;
- (C) is currently incapacitated and unable to render adequate legal service;
- (D) knows that if a hearing were to be held, Bar Counsel would have the burden of proving by clear and convincing evidence that the attorney is so incapacitated as to require the attorney to be placed on inactive status;

(E) understands that being placed on inactive status, if ordered by the Court of Appeals, terminates the attorney's privilege to practice law in this State until otherwise ordered by the Court;

(F) agrees to comply with Rule 16-760 and any conditions stated in the petition that the Court of Appeals may impose;

(G) understands that the attorney may not be reinstated to practice law unless the attorney is able to prove by a preponderance of the evidence that the attorney has regained the ability to render adequate legal services, that inactive status should be terminated, and that the attorney should be reinstated to active practice;

(H) has disclosed to Bar Counsel the name of every physician, other health care provider, and health care facility by whom or at which the attorney has been examined, evaluated, or treated; and

(I) has furnished Bar Counsel with written consent to the release of such health care information and records as Bar Counsel has requested and waived any privilege as to such information and records.

(3) Order of the Court of Appeals

Upon the filing of the joint petition and affidavit, the Court of Appeals may enter an order, signed by the Chief Judge or a judge designated by the Chief Judge, placing the attorney on inactive status by consent pending further order of the Court and imposing any conditions stated in the petition. The provisions of Rule 16-760 apply to an order entered under this section.

(d) Duty of Clerk

When an attorney has been disbarred, suspended, or placed on inactive status under this Rule, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify to the Trustees of the Clients' Security Trust Fund and the clerks of all courts in this State that the attorney's name has been so stricken.

(e) Effect of Denial

If the Court of Appeals denies a joint petition for discipline or inactive status, the investigation or disciplinary or remedial proceeding shall resume as if no consent had been given. Neither the joint petition nor the affidavit may be admitted in evidence.

Source: This Rule is in part derived from former Rules 16-712 d (BV12 d) and 16-713 a (BV13 a) and in part new. Rule 16-773.
RECIPROCAL DISCIPLINE OR INACTIVE STATUS

(a) Duty of Attorney

An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel promptly of the discipline, resignation, or inactive status.

(b) Duty of Bar Counsel

Upon receiving information from any source that in another jurisdiction an attorney has been disciplined or placed on inactive status based on incapacity, Bar Counsel shall obtain a certified copy of the disciplinary or remedial order and file it with a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 16-751, and shall serve copies of the petition and order upon the attorney in accordance with Rule 16-753.

(c) Show Cause Order

When a petition and certified copy of a disciplinary or remedial order have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within 15 days from the date of the order, show cause in writing based upon any of the grounds set forth in section (e) of this Rule why

corresponding discipline or inactive status should not be imposed.

(d) Temporary Suspension of Attorney

When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or is currently suspended from practice by final order of a court in another jurisdiction, the Court of Appeals may enter an order, effective immediately, suspending the attorney from the practice of law, pending further order of Court. The provisions of Rule 16-760 apply to an order suspending an attorney under this section.

(e) Exceptional Circumstances

Reciprocal discipline shall not be ordered if Bar Counsel or the attorney demonstrates by clear and convincing evidence that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court, consistent with its duty, cannot accept as final the determination of misconduct;

(3) the imposition of corresponding discipline would result in grave injustice;

(4) the conduct established does not constitute misconduct in this State or it warrants substantially different discipline in this State; or

(5) the reason for inactive status no longer exists.

(f) Action by Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may immediately impose corresponding discipline or inactive status, may enter an order designating a judge pursuant to Rule 16-752 to hold a hearing in accordance with Rule 16-757, or may enter any other appropriate order. The provisions of Rule 16-760 apply to an order under this section that disbars or suspends an attorney or that places the attorney on inactive status.

(g) Conclusive Effect of Adjudication

Except as provided in subsections (e)(1) and (e)(2) of this Rule, a final adjudication in a disciplinary or remedial proceeding by another court, agency, or tribunal that an attorney has been guilty of professional misconduct or is incapacitated is conclusive evidence of that misconduct or incapacity in any proceeding under this Chapter. The introduction of such evidence does not preclude the Commission or Bar Counsel from introducing additional evidence or

preclude the attorney from introducing evidence or otherwise showing cause why no discipline or lesser discipline should be imposed.

(h) Effect of Stay in Other Jurisdiction

If the other jurisdiction has stayed the discipline or inactive status, any proceedings under this Rule shall be deferred until the stay is no longer operative and the discipline or inactive status becomes effective.

Source: This Rule is in part derived from former Rule 16-710 e (BV10 e) and in part new.

Rule 16-774. SUMMARY PLACEMENT ON INACTIVE STATUS

(a) Grounds

An attorney may be summarily placed on inactive status for an indefinite period if the attorney has been judicially determined to be mentally incompetent or to require a guardian of the person for any of the reasons stated in Code, Estates and Trusts Article, §13-705 (b), or, in accordance with law, has been involuntarily admitted to a facility for inpatient care treatment of a mental disorder.

(b) Procedure

(1) Petition for Summary Placement; Confidentiality

Bar Counsel, with the approval of the Commission, may file in accordance with Rule 16-751 a petition to summarily

place an attorney on inactive status. The petition shall be supported by a certified copy of the judicial determination or involuntary admission. The petition and all other papers filed in the Court of Appeals shall be sealed and stamped "confidential" in accordance with Rule 16-723 (b)(7).

(2) Service

The petition and all papers filed with the petition shall be served upon the attorney in accordance with Rule 16-753 and, in addition, upon any guardian of the person of the attorney and the director of any facility to which the attorney has been admitted. Proof of service shall be made in accordance with Rule 2-126.

(c) Order of the Court of Appeals Upon consideration of the petition and any answer, the Court of Appeals may immediately place the attorney on inactive status for an indefinite period pending further order of the Court, may enter an order designating a judge in accordance with Rule 16-752 to hold a hearing in accordance with Rule 16-757, or may enter any other appropriate order. The provisions of Rule 16-760 apply to an order that places an attorney on inactive status. Copies of the order shall be served upon Bar Counsel and each person named in the proof of service of the petition.

(d) Effect on Disciplinary or Remedial Proceeding

If a disciplinary or remedial proceeding for alleged misconduct is pending against the attorney, the entry of an order under this section shall stay the proceeding until the further order of the Court.

(e) Termination of Inactive Status

When an attorney who has been placed on inactive status under section (c) of this Rule is judicially determined to be competent or is judicially released after involuntary admission, the Court of Appeals shall terminate the inactive status and either dismiss the petition or enter an order designating a judge in accordance with Rule 16-752 to hold a hearing in accordance with Rule 16-757.

Source: This Rule is new.
Rule 16-775. RESIGNATION OF ATTORNEY

(a) Application

An application to resign from the practice of law in this State shall be submitted in writing under oath to the Court of Appeals, with a copy to Bar Counsel. The application shall state that the resignation is not being offered to avoid disciplinary action and that the attorney has no knowledge of any pending investigation, action, or proceedings in any jurisdiction involving allegations of professional misconduct by the attorney.

(b) When Attorney May Not Resign

An attorney may not resign while the attorney is the subject of a disciplinary investigation, action, or proceeding involving allegations of professional misconduct. An application to resign does not prevent or stay any disciplinary action or proceeding against the attorney.

(c) Procedure

Upon receiving a copy of the application submitted in accordance with section (a) of this Rule, Bar Counsel shall investigate the application and file a response with the Clerk of the Court.

(d) Order of the Court of Appeals

The Court of Appeals shall enter an order accepting or denying the resignation. A resignation is effective only upon entry of an order accepting it.

(e) Duty of Clerk

When the Court enters an order accepting an attorney's resignation, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify that fact to the Trustees of the Clients' Security Trust Fund and the clerks of all courts in this State.

(f) Effect of Resignation

An attorney may not practice law in this State after entry of an order accepting the attorney's resignation. Bar Counsel shall give any notice required by Rule 16-723 (d).

(g) Motion to Vacate

On motion of Bar Counsel, the Court may vacate or modify the order in case of intrinsic or extrinsic fraud.

Source: This Rule is in part derived from former Rules 16-712 (BV12) and 16-713 a (BV13 a) and in part new.

Rule 16-776. INJUNCTION; EXPEDITED DISCIPLINARY OR REMEDIAL ACTION

(a) Injunction to Prevent Serious Harm

(1) Authority of Commission

Upon receiving information that an attorney is engaging in professional misconduct and poses an immediate threat of causing (A) death or substantial bodily harm to another, (B) substantial injury to the financial interest or property of another, or (C) substantial harm to the administration of justice, Bar Counsel, with approval of the Chair of the Commission, may apply in accordance with the provisions of Title 15, Chapter 500 for appropriate injunctive relief against the attorney. The relief sought may include restricting the attorney's practice of law, limiting or

prohibiting withdrawals from any account in any financial institution, and limiting or prohibiting transfers of funds or property.

Committee note: Except as otherwise provided in this Rule, Rules 15-501 through 15-505, the rules relating to temporary restraining orders and injunctions, apply. The appealability of injunctions under this Rule is governed by Code, Courts Article, §12-303.

Cross reference: See Rule 16-777 for the right of Bar Counsel to request the appointment of a conservator when an attorney no longer can practice.

(2) Parties

The action for injunction shall be brought in the name of the Commission against the attorney whose conduct is alleged to be causing or threatening the harm and against any other person alleged to be assisting or acting in concert with the attorney. (3) Effect of Investigation or Disciplinary or Remedial Proceeding

A court may not delay or deny an injunction solely because the misconduct is or may become the subject of an investigation under Rule 16-731 or the basis for a Statement of Charges under Rule 16-741.

(4) Order Granting Injunction

In addition to meeting the requirements of Rule 15-502 (e), an order granting a preliminary or permanent injunction pursuant to this section shall include specific

findings by a preponderance of the evidence that the attorney has engaged in the professional misconduct alleged and poses the threat alleged in the complaint. A bond shall not be required except in exceptional circumstances.

(5) Service of Injunction on Financial Institution

An order granting an injunction under this section that limits or prohibits withdrawals from any account or that limits or prohibits transfers of funds or property is effective against any financial institution upon which it is served from the time of service.

(b) Expedited Disciplinary or Remedial Action

When an injunction has issued in accordance with this Rule, and regardless of any pending appeal or motion to modify or dissolve the injunction, Bar Counsel shall immediately commence an action against the attorney by filing in the Court of Appeals a Petition for Disciplinary or Remedial Action pursuant to Rule 16-751. A certified copy of the order granting the injunction shall be attached to the petition. The action shall proceed in accordance with Rules 16-751 through 16-761. The Court of Appeals may assign the petition for hearing to the judge who granted the injunction.

Source: This Rule is new.

Rule 16-777. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized

If an attorney dies, disappears, or has been disbarred, suspended, or placed on inactive status, or has abandoned the practice of law, and no personal representative, partner, or other responsible party capable of conducting the former attorney's affairs is known to exist, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients.

(b) Petition and Order

The petition to appoint a conservator may be filed in the circuit court in any county in which the attorney maintained an office for the practice of law. Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the former attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring action.

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding new counsel, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule 1.17 of the Maryland Rules of Professional Conduct.

(f) Compensation

The conservator shall be entitled to periodic payment from the attorney's assets or estate for reasonable hourly attorney's fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment. Upon verified motion served upon the attorney at the attorney's last known address or, if the attorney is deceased, upon the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator. If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission in its sole discretion may authorize payment from the Disciplinary Fund in an amount not exceeding

the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment. Source: This Rule is in part derived from former Rule 16-717 (BV17) and in part new.

Rule 16-781. REINSTATEMENT

(a) Petition

A petition for reinstatement to the practice of law shall be filed in the Court of Appeals. It shall be verified and include docket references to all prior disciplinary or remedial actions to which the petitioner was a party. A copy of the order that disbarred or suspended the petitioner from the practice of law, placed the petitioner on inactive status, or accepted the petitioner's resignation shall be attached, together with any opinion of the Court that accompanied the order. The petition shall certify that the petitioner has complied in all respects with the provisions of Rule 16-770 and with the terms and conditions of the disciplinary or

remedial order. Except as provided in section (e) of this Rule, the petition shall allege facts describing the petitioner's original misconduct, subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria specified in section (g) of this Rule.

(b) Processing Fee

Upon filing the petition, the petitioner shall pay any filing fee or costs prescribed by law. Except as provided in section (e) of this Rule, the petitioner also shall deposit with the Clerk of the Court of Appeals a non-refundable processing fee set by the Commission and approved by the Court of Appeals payable to the Disciplinary Fund.

(c) Service The petition shall be served upon Bar Counsel pursuant to Rule 2-121 and upon any other person designated by order of the Court of Appeals on request of Bar Counsel.

(d) Requirement to Provide Information to Bar Counsel

(1) Petitioner Disbarred or Suspended Indefinitely or for More Than Six Months

A petitioner who has been disbarred or suspended indefinitely or for more than six months shall provide the

following information to Bar Counsel at the time of filing the petition:

(A) the petitioner's current address and telephone number; (B) the address of each residence during the period of discipline, with inclusive dates of each residence;

(C) documentary evidence supporting the petitioner's claim that the criteria specified in section (g) have been satisfied;

(D) the name, address, and telephone number of each employer, associate, and partner of the petitioner during the period of discipline, with the inclusive dates of each employment, association, and partnership, the positions held, the names of all supervisors, and, if applicable, reasons for terminating the employment, association, or partnership;

(E) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the petitioner was a party or in which the petitioner claimed an interest;

(F) a statement of monthly earnings and all other income during the period of discipline, including the source;

(G) a statement of the petitioner's assets and financial obligations;

(H) the names and addresses of all creditors;

(I) a statement that any required restitution has been made and the amounts paid;

(J) a statement indicating whether the petitioner has applied for reinstatement in any other jurisdiction and the present status of each application;

(K) a statement identifying all other business or occupational licenses or certificates applied for during the period of discipline and the current status of each application;

(L) the name and address of each financial institution at which the petitioner maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline;

(M) written authorization for Bar Counsel to secure financial records pertaining to any account, safe deposit box, deposit, or loan at any financial institution identified in subsection (d)(1)(L) of this Rule;

(N) copies of the petitioner's state and federal income tax returns for the three years preceding the effective date of discipline and each year thereafter; and

(0) any other information that the petitioner believes is relevant to determining whether the petitioner possesses the character and fitness necessary for reinstatement.

(2) Petitioner on Inactive Status for Incapacity

A petitioner who has been placed on inactive status for incapacity shall provide the following information to Bar Counsel at the time of filing the petition:

(A) information that complies with the requirements of subsections (d)(1)(A), (d)(1)(C), (d)(1)(J), and (d)(1)(O) of this Rule;

(B) a statement of the name, address, and telephone number of each health care provider and institution that examined or treated the petitioner for incapacity during the period of inactive status; and

(C) a written waiver of any physician-patient privilege with respect to each health care provider named in subsection (d)(2)(A) of this Rule.

(e) Expedited Reinstatement

If the petitioner is an attorney who has been suspended for a definite period and the period has elapsed, Bar Counsel may consent to reinstatement by filing with the Clerk of the Court of Appeals a written notice that Bar Counsel is satisfied that the attorney has complied in all respects with

the provisions of Rule 16-760 and with the terms and conditions of the order imposing the suspension. Upon receiving Bar Counsel's consent, the Clerk shall proceed in accordance with the applicable provisions of section (1) of this Rule. If Bar Counsel does not consent, Bar Counsel shall respond to the petition in accordance with section (f) of this Rule and shall state the particular grounds for withholding consent. The processing fee required by section (b) of this Rule does not apply to a petition filed under this section.

(f) Response to Petition

Bar Counsel shall file a response to the petition within 30 days after being served unless a different time is ordered. The response shall admit or deny the averments of the petition in accordance with Rule 2-323 (c) and may include a statement of Bar Counsel's recommendations and reasons for supporting or opposing the petition.

(g) Criteria For Reinstatement

The Court of Appeals shall consider the nature and circumstances of the petitioner's original conduct, the petitioner's subsequent conduct and reformation, the petitioner's current character, and the petitioner's current qualifications and competence to practice law. The Court may order reinstatement if the petitioner meets each of the

following criteria or presents sufficient reasons why the petitioner should nonetheless be reinstated:

(1) The petitioner has complied in all respects with the provisions of Rule 16-760 and with the terms and conditions of prior disciplinary or remedial orders;

(2) The petitioner has not engaged or attempted or offered to engage in the unauthorized practice of law and has not engaged in any other professional misconduct during the period of suspension, disbarment, or inactive status;

(3) If the petitioner was placed on inactive status, the incapacity or infirmity (including alcohol or drug abuse) does not now exist and is not reasonably likely to recur in the future; (4) If the petitioner was disbarred or suspended, the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(5) The petitioner has not engaged in any other professional misconduct since the imposition of discipline;

(6) The petitioner currently has the requisite honesty and integrity to practice law;

(7) The petitioner has kept informed about recent developments in the law and is competent to practice law; and

(8) The petitioner has paid all sums previously assessed by the order of the Court of Appeals.

(h) Disposition

Upon review of the petition and Bar Counsel's response, the Court of Appeals may order (1) dismissal without a hearing, (2) reinstatement, or (3) further proceedings in accordance with section (i) of this Rule.

(i) Further Proceedings

If the Court of Appeals orders further proceedings, the Court shall enter an order designating a judge in accordance with Rule 16-752 to hold a hearing. The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 16-756, take depositions and complete discovery. The applicable provisions of Rule 16-757 shall govern the hearing, including the requirement that the petitioner shall have the burden of proving the averments of the petition by clear and convincing evidence. The applicable provisions of Rules 16-758 and 16-759, except section (c) of Rule 16-759, shall govern any subsequent proceedings in the Court of Appeals. The Court may order (1) reinstatement, (2) dismissal of the petition, or (3) a remand for further proceedings.

(j) Conditions Of Reinstatement

An order that reinstates a petitioner may require that the petitioner fulfill, either as a condition precedent to

reinstatement or a condition of probation after reinstatement, one or more of the provisions set forth in Rule 16-760 (h) and one or more of the following requirements:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, §10-212;

(2) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(3) successfully complete a professional ethics course at an accredited law school;

(4) attend the professionalism course required for newly-admitted attorneys;

(5) pass either the regular comprehensive Maryland bar examination or an attorney examination administered by the Board of Law Examiners; and

(6) pay all costs assessed in accordance with section (o) of this Rule.

(k) Effective Date Of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order. If no effective date is stated, the order shall take effect on the date that Bar Counsel gives written notice to the Clerk of the Court of Appeals that the petitioner has

complied with all conditions precedent to reinstatement set forth in the order.

(l) Duties of Clerk

(1) Attorney Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner admitted by the Court of Appeals to the practice of law, the Clerk of the Court of Appeals shall place the name of the petitioner on the register of attorneys in that Court and shall certify that fact to the Trustees of the Clients' Security Trust Fund and to the clerks of all courts in the State.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

(m) Duty of Bar Counsel

Promptly after the effective date of an order that reinstates a petitioner, Bar Counsel shall give any notice required by Rule 16-723 (d) and shall request the Clerk of the Court of Appeals to notify the disciplinary authority of anyother jurisdiction in which the petitioner may be admitted to practice.

(n) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 16-760 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 16-752 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 16-756. The applicable provisions of Rule

16-757 shall govern the hearing. The applicable provisions of Rules 16-758 and 16-759, except section (c) of Rule 16-759, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

(o) Costs

In proceedings for reinstatement, unless the Court of Appeals orders otherwise, the petitioner shall pay all court costs and costs of investigation and other proceedings on the petition, including the costs of physical and mental examinations, transcripts, and other expenditures incurred by Bar Counsel that were reasonably necessary to evaluate the petition.

Source: This Rule is in part derived from former Rules 16-713 a 2 (BV13 a 2), 16-714 (BV14), 16-715 b (BV15 b), and in part new.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-811 d, f, and h, effective July 1, 2001, to conform the Rule to certain provisions in revised Title 16,

Chapter 700 and to add a definition of "local Bar Association," as follows:

Rule 16-811. Clients' Security Fund.

. . .

d. Powers and Duties of Trustees.

1. Additional Powers and Duties.

In addition to the powers granted elsewhere in this Rule, the trustees shall have the following powers and duties:

(i) To receive, hold, manage, and distribute, pursuant to this Rule, the funds raised hereunder, and any other monies that may be received by the trust fund through voluntary contributions or otherwise.

(ii) To authorize payment of claims in accordance with this Rule.

(iii) To adopt regulations for the administration of the trust fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt bylaws for conducting business. A copy of such regulations shall be filed with the clerk of this Court, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. (iv) To

enforce claims for restitution, arising by subrogation or assignment or otherwise.

(v) To invest the trust fund, or any portion thereof, in such investments as they may deem appropriate, and to cause funds to be deposited in any bank, banking institution or federally insured savings and loan association in this State, provided however, that the trustees shall have no obligation to cause the trust fund or any portion thereof to be invested.

(vi) To employ and compensate consultants, agents, legal counsel and employees.

(vii) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the trust fund, including the power to authorize disbursements for routine operating expenses of the trust fund, but authorization for payments of claims shall be made only as provided in section i (Claims) of this Rule.

(viii) To sue or be sued in the name of the trust without joining any or all individual trustees.

(ix) To comply with the requirements of Rules 16-713 (e), 16-714 (b), 16-724 (a), and 16-753.

[(ix)] (x) To perform all other acts necessary or proper for fulfillment of the purposes of the trust fund and its efficient administration.

2. Report and Audit - Filing.

At least once each year, and at such additional times as the Court may order, the trustees shall file with this Court a written report, which shall include the audit made pursuant to subsection 3 of section j (Powers of Court of Appeals - Audits) of this Rule of the management and operation of the trust fund.

. . .

f. Payments to Fund.

1. Definition.

In this section, "local Bar Association" means (A) in Baltimore City, the Bar Association of Baltimore City; or (B) in each county, the bar association with the greatest number of members who are residents of the county and who maintain their principal office for the practice of law in that county.

[1.] 2. Payment Required as Condition of Practice; Exception.

Except as otherwise provided in this section, each lawyer admitted to practice before this Court or issued a certificate of special authorization under Rule 15 of Rules

Governing Admission to Bar, shall, as a condition precedent to the practice of law (as from time to time defined in Code, Business and Professions Article) in this State, pay annually to the treasurer of the trust fund the sum, including any late charges, this Court may fix. The trustees may provide in their regulations reasonable and uniform deadline dates for receipt of payments of assessments or applications for change to inactive/retired status. A lawyer on inactive/retired status may engage in the practice of law without payment to the trust fund if (A) the lawyer is on inactive/retired status solely as a result of having been approved for that status by the trustees and not as a result of any action against the attorney pursuant to Title 16, Chapter 700 of these Rules and (B) the lawyer's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the lawyer's participation in a legal services or pro bono publico program sponsored or supported by a local Bar Association [as defined by Rule 16-701 b.], the Maryland State Bar Association, an affiliated bar foundation, or the Maryland Legal Services Corporation.

[2.] 3. Change of Address.

It is the obligation of each lawyer to give written notice to the trustees of every change in the lawyer's

resident address, business address, or telephone numbers within 30 days of the change. The trustees shall have the right to reply on the latest information received by them for all billing and other correspondence.

[3.] 4. Due Date.

Payments for any fiscal year shall be due on July 1st of each such year.

[4.] 5. Dishonor.

If any check to the trust fund in payment of an annual assessment is dishonored, the treasurer of the trust fund shall promptly notify the attorney of the dishonor. The attorney shall be responsible for all additional charges assessed by the trustees.

. . .

h. Treasurer's Duties.

1. Separate Account. The trust fund shall be maintained by the treasurer in a separate account.

2. Disbursements.

The treasurer shall disburse monies from the trust fund only upon the action of the trustees pursuant to this Rule.

3. Bond.

The treasurer shall file annually with the trustees a bond for the proper execution of the duties of the office of

treasurer of the trust fund in an amount established from time to time by the trustees and with such surety as may be approved by the trustees.

4. Other Duties.

The treasurer shall comply with the requirements of Rules [16-702 j and 16-709 d] 16-713 (e), 16-714 (b), 16-724 (a), and 16-753.

. . .